



# House of Representatives

## **File No. 593**

General Assembly

February Session, 2002

**(Reprint of File No. 83)**

Substitute House Bill No. 5248  
As Amended by House  
Amendment Schedule "A"

Approved by the Legislative Commissioner  
April 27, 2002

### **AN ACT CONCERNING THE UNIFORM CONSUMER LEASES ACT.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. (NEW) (*Effective July 1, 2003*) This act may be cited as the  
2       Uniform Consumer Leases Act.

3       Sec. 2. (NEW) (*Effective July 1, 2003*) (a) In this act:

4       (1) "Conspicuous", with reference to a provision or statement, means  
5       so written, displayed or presented that a reasonable person against  
6       which it is to operate should have noticed it. Whether a provision or  
7       statement is conspicuous is a decision for the court. Conspicuous  
8       provisions or statements include the following:

9       (A) A heading in capitals equal in size to or greater in size than the  
10      surrounding text, or in contrasting type, font or color to the  
11      surrounding text of the same or lesser size; and

12      (B) Language in the body of a record or display in larger type than  
13      the surrounding text, or in contrasting type, font or color to the

14 surrounding text of the same size, or set off from surrounding text of  
15 the same size by symbols or other marks that call attention to the  
16 language.

17 (2) "Consumer lease" means a lease in which:

18 (A) The lessee is obligated for a term of more than four months and  
19 for a total contractual obligation of one hundred fifty thousand dollars  
20 or less, excluding residual value, payments for options to renew or  
21 purchase and payments to persons other than the holder, whether or  
22 not the lessee has the option to purchase or otherwise become the  
23 owner of the goods at the expiration of the lease; and

24 (B) When the lease is consummated, the goods are intended by the  
25 lessee primarily for personal, family or household purposes.

26 (3) "Federal Consumer Leasing Act" means Chapter 5 of Title I of the  
27 Consumer Credit Protection Act, 15 USC Sections 1667 to 1667f,  
28 inclusive, as amended. The term includes regulations issued by the  
29 Board of Governors of the Federal Reserve System pursuant to that act,  
30 Regulation M, 12 CFR Part 213, as amended.

31 (4) "Good faith" means honesty in fact and the observance of  
32 reasonable commercial standards of fair dealing.

33 (5) "Goods" means all things that are movable at the time of  
34 identification to a consumer lease, or are fixtures. The term does not  
35 include money, documents, letters of credit, letter-of-credit rights,  
36 instruments, investment property, accounts, chattel paper, deposit  
37 accounts, general intangibles or minerals or the like, including oil and  
38 gas, before extraction.

39 (6) "Guarantor" means an individual who becomes obligated to  
40 perform as an additional obligor under a consumer lease because the  
41 original lessee either does not meet the lessor's credit standards or is in  
42 default under the lease. The term does not include:

43 (A) An individual who agrees or requests to become obligated as a

44     colessee; or

45         (B) An assignor of a consumer lease.

46         (7) "Holder" means a lessor or, if the lessor's interest is assigned, the  
47     assignee for the period of the assignee's ownership of the interest.

48         (8) "Lease" means a transfer of the right to possession and use of  
49     goods for a period in return for consideration. The term does not  
50     include a sale on approval, a sale or return or another sale, or the  
51     retention or creation of a security interest. The term includes a  
52     sublease.

53         (9) "Lessee" means an individual who acquires, applies for, or is  
54     offered the right to possession and use of goods under a consumer  
55     lease. The term includes a legal representative of, fiduciary for or  
56     successor in interest to, an individual who is a lessee, but does not  
57     include a guarantor on a consumer lease.

58         (10) "Lessor" means a person that transfers the right to possession  
59     and use of goods under a consumer lease.

60         (11) "Motor vehicle" means a vehicle required by law to be  
61     registered under section 14-12 of the general statutes.

62         (12) "Open-end consumer lease" means a consumer lease in which  
63     the lessee's liability at the expiration of the lease is based on the  
64     difference between the residual value and the realized value of the  
65     leased goods.

66         (13) "Realized value" means a valuation of the goods at the time the  
67     holder assesses liability on the lessee in connection with termination of  
68     the lease, as determined under section 31 of this act.

69         (14) "Record" means information that is inscribed on a tangible  
70     medium or that is stored in an electronic or other medium and is  
71     retrievable in perceivable form.

72 (15) "Sign" means:

73 (A) To execute or adopt a tangible symbol with the present intent to  
74 authenticate a record; or

75 (B) To attach or logically associate an electronic symbol, sound or  
76 process to or with a record with the present intent to authenticate a  
77 record.

78 (16) "State" means a State of the United States, the District of  
79 Columbia, Puerto Rico, the United States Virgin Islands or any  
80 territory or insular possession subject to the jurisdiction of the United  
81 States.

82 (b) The following terms used in this act have the meanings ascribed  
83 in the Uniform Commercial Code:

T1	"Accession".	Section 42a-9-102(a), as amended.
T2	"Agreement".	Section 42a-1-201(3).
T3	"Contract".	Section 42a-1-201(11).
T4	"Investment property".	Section 42a-9-102(a), as amended.
T5	"Money".	Section 42a-1-201(24).
T6	"Person".	Section 42a-1-201(30).
T7	"Person related to".	Section 42a-9-102(a), as amended.
T8	"Security interest".	Section 42a-1-201(37), as amended.
T9	"Send".	Section 42a-1-201(38).

84 (c) The following terms used in this act have the meanings ascribed  
85 in the federal Consumer Leasing Act:

86 (1) "Adjusted capitalized cost";

87 (2) "Capitalized cost reduction";

88 (3) "Gross capitalized cost";

89 (4) "Rent charge"; and

90 (5) "Residual value".

91 Sec. 3. (NEW) (*Effective July 1, 2003*) (a) Consummation of a  
92 consumer lease occurs when the lessee signs a record evidencing the  
93 lessee's contractual obligation under the lease. A lessee may  
94 consummate a consumer lease even if it is subject to subsequent credit  
95 or other approval by the lessor or an assignee of the lessor.

96 (b) Expiration of a consumer lease occurs at the scheduled end of  
97 the period covered by the lease.

98 (c) Termination of a consumer lease occurs when the lessee's right to  
99 continued possession and use of the goods ends by virtue of:

100 (1) Expiration of the lease;

101 (2) Election by one of the parties to terminate before expiration, as  
102 provided in the lease; or

103 (3) Agreement of the parties.

104 Sec. 4. (NEW) (*Effective July 1, 2003*) (a) Except as otherwise  
105 provided in subsections (b) to (e), inclusive, of this section, this act  
106 applies to a consumer lease.

107 (b) This act does not apply to a consumer lease unless the lessor has  
108 leased goods under a consumer lease more than five times in the  
109 preceding calendar year or more than five times in the current calendar  
110 year.

111 (c) This act does not apply to a lease of:

112 (1) A safe deposit box;

113 (2) Goods incidental to a lease of real property under which the  
114 lessee: (A) Has no liability for the value of the goods at the end of the  
115 lease period except for abnormal wear and use; and (B) has no option  
116 to purchase the goods; or

117 (3) Goods incidental to a contract for the sale of goods or services.

118 (d) If a transaction that is predominantly a consumer lease includes  
119 an incidental sale of goods, services or other benefits, including  
120 accessories, insurance, an extended warranty, a maintenance  
121 agreement or a service contract, the incidental sale is not subject to  
122 sections 36a-770 to 36a-788, inclusive, as amended, section 42-100b,  
123 section 42-100c and sections 42-125aa to 42-125cc, inclusive, of the  
124 general statutes.

125 (e) A provision in a consumer lease for payment of governmental,  
126 license or registration fees; taxes related to the lease; or an amount  
127 necessary to discharge a security interest in, a lien on, or a debt with  
128 respect to, property traded in, or to satisfy an obligation owed on a  
129 previous lease, does not make the payment subject to sections 36a-555  
130 to 36a-573, inclusive, sections 36a-675 to 36a- 685, inclusive, sections  
131 36a-770 to 36a-788, inclusive, as amended, section 42-100b, section 42-  
132 100c and sections 42-125aa to 42-125cc, inclusive, of the general  
133 statutes.

134 Sec. 5. (NEW) (*Effective July 1, 2003*) (a) A consumer lease may not be  
135 deemed a credit sale, loan or security interest to make the transaction  
136 subject to coverage by other law in lieu of this act.

137 (b) The parties to a lease that is not subject to this act may agree in  
138 the lease, or in a contemporaneous record, that this act applies to the  
139 lease.

140 (c) The parties to a consumer lease may not agree that the  
141 transaction is governed by other law in lieu of this act.

142 Sec. 6. (NEW) (*Effective July 1, 2003*) The provisions of this act are  
143 supplemented by other applicable statutory provisions and by general  
144 principles of law and equity, including the law merchant and the law  
145 relative to capacity to contract, principal and agent, estoppel, fraud,  
146 misrepresentation, duress, coercion, mistake, bankruptcy and other  
147 validating or invalidating cause, unless those provisions or principles

148 are displaced by or inconsistent with the provisions of this act.  
149 Nothing in this act shall be construed to limit or restrict in any way  
150 any rights or remedies which may be available to a lessee or person  
151 under any other statutory provisions or under general principles of  
152 law and equity.

153 Sec. 7. (NEW) (*Effective July 1, 2003*) (a) Except as otherwise  
154 permitted by this act, a lessee may waive or agree to forgo rights,  
155 benefits or remedies under this act only in settling a dispute or  
156 collection claim.

157 (b) A settlement in which a lessee agrees to forgo a right, benefit or  
158 remedy under this act is invalid if the court finds that the settlement  
159 was unconscionable when made.

160 Sec. 8. (NEW) (*Effective July 1, 2003*) (a) The parties to a consumer  
161 lease may not choose the law of a jurisdiction unless it is a jurisdiction  
162 in which:

163 (1) The lessee principally resides when the lease is consummated;

164 (2) The lessee will principally reside within thirty days after the  
165 lease is consummated;

166 (3) The leased goods are to be used; or

167 (4) Subject to subsection (b) of this section, the leased goods are  
168 physically received by the lessee.

169 (b) If the law chosen by the parties to a consumer lease under  
170 subdivision (4) of subsection (a) of this section is the law of a  
171 jurisdiction other than this state and the holder acts or initiates an  
172 action in this state to enforce rights arising from the lease against a  
173 lessee who is a resident of this state, the following rules apply:

174 (1) The holder's act or action is subject to sections 5, 6, 7, 9, and 10 of  
175 this act and, except for a disclosure that would have been required by  
176 this act to be made before the holder's act or action, to sections 19 to 26,

177 inclusive, and 29 to 34, inclusive, of this act.

178 (2) The holder's act or action is subject to sections 35 to 42, inclusive,  
179 of this act if the holder's act or action violates a provision of this act  
180 made applicable by this subsection.

181 (c) Notwithstanding any provision in a consumer lease, an action by  
182 a holder against a lessee to enforce the holder's rights under the lease  
183 must be brought in the venue of the lessee's residence.

184 (d) Notwithstanding any provision in a consumer lease, a lessee  
185 may maintain an action against a holder in any judicial forum that  
186 otherwise has jurisdiction over the holder.

187 Sec. 9. (NEW) (*Effective July 1, 2003*) Every contract subject to, or  
188 duty imposed by, this act imposes an obligation of good faith in its  
189 performance or enforcement.

190 Sec. 10. (NEW) (*Effective July 1, 2003*) (a) If the court as a matter of  
191 law finds that a consumer lease or any provision of the lease was  
192 unconscionable when the lease was consummated, the court may  
193 refuse to enforce the lease, enforce the remainder of the lease without  
194 the unconscionable provision or so limit the application of an  
195 unconscionable provision as to avoid an unconscionable result.

196 (b) If the court as a matter of law finds that a consumer lease or any  
197 provision of a consumer lease was induced by unconscionable conduct  
198 or that unconscionable conduct has occurred in the collection of a  
199 claim arising from the lease, the court may grant appropriate relief.

200 (c) Before making a finding of unconscionability under subsection  
201 (a) or (b) of this section, the court shall afford the parties a reasonable  
202 opportunity to present evidence as to the setting, purpose and effect of  
203 the consumer lease, the provision or the conduct.

204 (d) In an action in which the lessee claims unconscionability with  
205 respect to a consumer lease, the following rules apply:



206 (1) If the court finds unconscionability under subsection (a) or (b) of  
207 this section, the court shall award reasonable attorney's fees to the  
208 lessee.

209 (2) In determining the reasonableness of attorney's fees, the amount  
210 of the recovery on behalf of the claimant under subsection (a) or (b) of  
211 this section is not controlling.

212 Sec. 11. (NEW) (*Effective July 1, 2003*) This act modifies, limits, and  
213 supersedes the federal Electronic Signatures in Global and National  
214 Commerce Act, 15 USC Section 7001 et seq., except that nothing in this  
215 act modifies, limits, or supersedes Section 7001(c) of said act or  
216 authorizes electronic delivery of any of the notices described in Section  
217 7003(b) of said act.

218 Sec. 12. (NEW) (*Effective July 1, 2003*) (a) In this section,  
219 "advertisement" means a commercial message in any medium that  
220 directly or indirectly promotes a consumer lease.

221 (b) An advertisement must comply with the requirements of the  
222 federal Consumer Leasing Act for advertising. If the advertised lease is  
223 not subject to said act, the advertisement must comply with those  
224 requirements as if the advertised lease were subject to said act.

225 (c) A person may not publish, broadcast or distribute a false,  
226 deceptive or misleading advertisement.

227 (d) This section does not apply to a person acting solely as an owner  
228 or employee of a medium in which an advertisement appears or  
229 through which it is disseminated.

230 Sec. 13. (NEW) (*Effective July 1, 2003*) (a) Before consummation of a  
231 consumer lease, a lessor, on request of an individual, shall promptly  
232 give a copy or reproduction of its current consumer lease form to the  
233 individual at the lessor's place of business. If a lessor contracts with  
234 lessees by mail, the lessor shall promptly send, on request by mail, a  
235 copy or reproduction of the form by mail. If a lessor contracts with

236 lessees electronically, the lessor shall promptly make available, on  
237 electronic request, a copy or reproduction of the form by mail or  
238 electronically.

239 (b) A lessor shall furnish the first copy or reproduction of the current  
240 lease form to an individual without charge but may impose a  
241 reasonable charge for additional copies or reproductions furnished to  
242 the same individual.

243 (c) If a lessor uses more than one consumer lease form, the lessor  
244 satisfies this section by furnishing a form the lessor has reason to  
245 believe is pertinent to the type of lease about which the individual has  
246 inquired.

247 Sec. 14. (NEW) (*Effective July 1, 2003*) (a) A lessor shall make the  
248 disclosures required by the federal Consumer Leasing Act. If the lease  
249 is not subject to said act, the lessor shall make the disclosures as if the  
250 lease were subject to said act.

251 (b) Before renegotiation or extension of a consumer lease, the holder  
252 shall make such new disclosures as are required by the federal  
253 Consumer Leasing Act. If the lease is not subject to said act, the holder  
254 shall make the disclosures as if the lease were subject to said act. A  
255 renegotiation occurs when a consumer lease is satisfied and replaced  
256 by a new consumer lease undertaken by the same lessee for the same  
257 goods. An extension is an agreement by the holder and the lessee of an  
258 existing consumer lease to continue the lease beyond its originally  
259 scheduled expiration, except when the continuation is the result of a  
260 renegotiation.

261 (c) At consummation, a consumer lease must be evidenced by a  
262 record that:

263 (1) Clearly indicates at the beginning of the record that it is a lease;

264 (2) Contains in a location close to the lessee's signature a  
265 conspicuous statement substantially as follows: "NOTICE TO THE

266 LESSEE: This is a lease. You are not buying the (insert here the name of  
267 the goods or vehicle). Do not sign this lease before you read it. You are  
268 entitled to a completed copy of this lease when you sign it.";

269 (3) Identifies the place of business of the lessor and the residence of  
270 the lessee;

271 (4) Identifies any property traded in or applied as a capitalized cost  
272 reduction or similar credit; and

273 (5) In a lease of a motor vehicle, itemizes the gross capitalized cost  
274 by type and amount, unless this itemization is included in a separate  
275 record accompanying the lease.

276 (d) A lessor may not present for the lessee to sign an application for  
277 a consumer lease or a consumer lease that contains blank spaces to be  
278 filled in after it has been signed by the lessee unless the goods are to be  
279 specially ordered for future delivery, in which case the due dates of  
280 periodic payments and specific identifying numbers, marks or similar  
281 information concerning the goods may be inserted in the application or  
282 lease after the lessee has signed.

283 (e) Promptly after consummation of a consumer lease, the lessor  
284 shall furnish to the lessee without charge a completed written copy of  
285 the lease signed by the lessor and lessee and, if not previously  
286 furnished, a written copy of all other records that the lessee has signed  
287 in connection with the transaction. As against a holder that took the  
288 lease without knowledge to the contrary, a lessee's written  
289 acknowledgment of receipt of a copy of these records creates a  
290 presumption of delivery of the copy.

291 Sec. 15. (NEW) (*Effective July 1, 2003*) (a) A lessor may require that  
292 the lessee maintain casualty insurance on the leased goods, or liability  
293 insurance against personal injury or property damage caused to others,  
294 or both, during the period of the lease. If a lessor requires that the  
295 lessee maintain either casualty or liability insurance, or both, unless the  
296 insurance is included in the lease for no additional charge, the lessor

297 shall disclose in a record that the lessee may purchase the required  
298 insurance from an insurer of the lessee's choice, subject to the lessor's  
299 right to reject that insurer for reasonable cause.

300 (b) If casualty insurance on the leased goods is neither required nor  
301 provided in a consumer lease, the lease must contain or be  
302 accompanied by a statement in a record substantially as follows: "No  
303 insurance coverage for physical damage to the leased goods, or loss of  
304 the leased goods, is provided under this lease."

305 (c) A lessor may not require the lessee to purchase credit life,  
306 accident, health, loss-of-income or similar insurance in connection with  
307 a consumer lease. If a lessor provides such insurance in connection  
308 with a consumer lease:

309 (1) The lessor shall disclose in a record that the insurance is not  
310 required; and

311 (2) The lessee's election to purchase the insurance is effective only if  
312 after receiving the disclosure the lessee separately signs a record  
313 requesting the insurance.

314 (d) If a lessee becomes obligated to pay an amount for insurance  
315 provided by or through the lessor, the lessor shall furnish or arrange to  
316 have furnished to the lessee a copy of the policy or certificate of  
317 insurance.

318 Sec. 16. (NEW) (*Effective July 1, 2003*) (a) The obligation of a  
319 guarantor with respect to a consumer lease is not enforceable unless:

320 (1) Before the guarantor signs a record evidencing the obligation, the  
321 lessor provides to the guarantor a clear statement in a record which  
322 identifies the obligation, the lessor and the lessee and reasonably  
323 informs the guarantor of the nature of the obligation; and

324 (2) The lessor provides to the guarantor a copy of the signed record  
325 evidencing the guarantor's obligation and, if the guarantor requests, a  
326 copy of the lease.

327 (b) A statement in substantially the following form complies with  
328 subdivision (1) of subsection (a) of this section:

329 NOTICE

330 Name of Guarantor: ....

331 You agree to pay the lease obligation identified below although you  
332 may not personally receive any goods. You may have to pay this  
333 obligation even if the person who receives the goods is able to pay.  
334 This notice is not the contract that makes you responsible for the  
335 obligation. Read the lease for the exact terms of your obligation.

336 Identification of Obligation You May Have to Pay: ....

337 Name of Lessee: ....

338 Name of Lessor: ....

339 (c) As against a holder who took the consumer lease without  
340 knowledge to the contrary, a guarantor's signed acknowledgment of  
341 receipt of the records specified in subsection (b) of this section creates a  
342 presumption of delivery of those records to the guarantor.

343 Sec. 17. (NEW) (*Effective July 1, 2003*) (a) During the period of a  
344 consumer lease, the following rules apply:

345 (1) A person that receives a payment in money from a lessee under a  
346 consumer lease shall furnish the lessee a written receipt for the  
347 payment.

348 (2) If a lessee so requests in a record, the holder, within two weeks  
349 after receiving the request, shall send to the lessee in a record, as  
350 requested, a statement of:

351 (A) The dates and amounts of the periodic payments that have been  
352 received by holders of the lease and the total amount of the remaining  
353 periodic payments;

354 (B) The lessee's total obligation due to satisfy the lease if terminated  
355 at a specified date before expiration, and a statement that the amount  
356 so due will be reduced by the realized value of the goods, if that is the  
357 case; and

358 (C) If the lease provides for a purchase option that may be exercised  
359 at the lessee's request, the purchase option price at the date specified in  
360 the request.

361 (3) In a statement under subdivision (2) of this subsection, an  
362 amount that is estimated must be so identified.

363 (4) A holder may not charge the lessee for furnishing one statement  
364 under each subparagraph of subdivision (2) of this subsection in each  
365 twelve-month period, but may charge a fee not to exceed five dollars  
366 for furnishing each additional statement during the same period.

367 (b) A holder, within two weeks after the lessee has discharged all of  
368 the lessee's obligations under the consumer lease, shall send to the  
369 lessee at the lessee's last known address a copy of the lease marked  
370 "satisfied", "paid in full" or similar term, or a separate record indicating  
371 satisfaction of the lease. The record of satisfaction does not release the  
372 lessee from liability under the lease for acts or events discovered by the  
373 holder after sending the record.

374 Sec. 18. (NEW) (*Effective July 1, 2003*) (a) If a lessee's application for a  
375 consumer lease is not approved on the terms submitted, the following  
376 rules apply:

377 (1) Except as otherwise provided in subdivision (2) of this  
378 subsection or in subsection (b) of this section, the lessor:

379 (A) Within one business day after disapproval of the application,  
380 shall tender back to the lessee any property traded in; and

381 (B) Promptly, but in no event more than five business days after  
382 disapproval of the application, shall refund any payment received  
383 other than an application fee.

384       (2) If the lessee has taken delivery of the goods before the  
385       disapproval of the lessee's application, the lessor shall tender delivery  
386       of the property traded in and the refund under subparagraph (B) of  
387       subdivision (1) of this subsection when the lessee tenders back the  
388       goods that were delivered to the lessee.

389       (b) In the case of a consumer lease of a motor vehicle in which the  
390       vehicle is delivered to the lessee pending approval of the lessee's  
391       application, the lessor, on or before delivery, shall give the lessee notice  
392       in a record of the rights and obligations provided in this section. If the  
393       application is not approved, the following rules apply:

394       (1) Except when the specified disclosure is made under subdivision  
395       (2) of this subsection, the lessor may not impose on the lessee any  
396       charge for the lessee's use of the vehicle.

397       (2) The lessor may impose a mileage charge for the lessee's use of  
398       the vehicle, at an amount not exceeding the mileage rate authorized for  
399       deduction under federal tax laws, but only if the fact and amount of  
400       that charge are disclosed to the lessee in a record separately signed by  
401       the lessee at the time of delivery. The lessor may offset the amount of  
402       the charge against any refund due the lessee.

403       (3) The limitations imposed by subdivisions (1) and (2) of this  
404       subsection do not affect a holder's right to recover for damage to or  
405       loss of the vehicle while in the lessee's possession attributable to the  
406       lessee's tortious act or omission, or forfeiture or confiscation of the  
407       vehicle under governmental authority.

408       (c) A lessor may not sell or otherwise dispose of any property traded  
409       in until the lessee's application is approved.

410       (d) If a lessor contracts to purchase property from a prospective  
411       lessee separately from a consumer lease, the lessor may not withhold  
412       payment pending, or otherwise condition payment upon,  
413       consummation of a consumer lease.

414 Sec. 19. (NEW) (*Effective July 1, 2003*) (a) A provision of a consumer  
415 lease may not:

416 (1) Authorize the holder to accelerate the maturity of all or part of  
417 the amount owing on the lease whenever the holder deems itself  
418 insecure;

419 (2) Require the lessee to execute an authorization to confess  
420 judgment or an assignment of wages; or

421 (3) Authorize the holder or another person to enter upon the lessee's  
422 premises or to commit a breach of the peace in the repossession of the  
423 goods.

424 (b) A provision prohibited by this section is unenforceable but does  
425 not otherwise affect the validity of the lease.

426 Sec. 20. (NEW) (*Effective July 1, 2003*) (a) Except as otherwise  
427 provided in subsection (b) of this section, a consumer lease or other  
428 record signed by the lessee in connection with the lease may not  
429 provide for the creation of a security interest in personal or real  
430 property of the lessee to secure the payment of obligations arising from  
431 the lease. A security interest created in violation of this section is  
432 unenforceable, but does not otherwise affect the validity of the lease.

433 (b) A consumer lease may provide for:

434 (1) A security deposit, advance lease payment or other prepayment;

435 (2) A security interest in unearned insurance premiums or rebates of  
436 charges for a contract for services, or a service contract, extended  
437 warranty or maintenance agreement regarding the leased goods;

438 (3) A security interest in the proceeds or benefits of insurance, or of a  
439 contract for services, service contract, extended warranty or  
440 maintenance agreement on the leased goods, except to the extent the  
441 proceeds or benefits represent reimbursement to the lessee for  
442 expenses incurred; and



443 (4) A security interest in an accession to the leased goods.

444 (c) This section does not preclude a holder from making a  
445 permissive filing of a financing statement under article 9 of the  
446 Uniform Commercial Code.

447 (d) A holder is not required to pay interest on a security deposit,  
448 advance lease payment or other prepayment, but is required, within  
449 two weeks after the application of a security deposit, to account to the  
450 lessee in a record for the application of the security deposit.

451 Sec. 21. (NEW) (*Effective July 1, 2003*) (a) A holder may impose on the  
452 lessee a late charge on a periodic payment that is delinquent for ten  
453 days or more in an amount specified in the consumer lease but not  
454 exceeding the lesser of ten dollars or five per cent of the unpaid  
455 portion of the late periodic payment. A late fee is not enforceable to the  
456 extent it exceeds this limit.

457 (b) A holder may not impose a late charge on a current periodic  
458 payment if the only delinquency in the current payment is an amount  
459 equal to or less than unpaid late charges imposed on earlier periodic  
460 payments, but the lease may impose an additional late charge if all or  
461 part of a periodic payment remains delinquent through an additional  
462 payment period.

463 (c) Subject to subsection (b) of this section regarding late charges, a  
464 consumer lease may provide for imposition on the lessee of charges for  
465 the lessee's delinquency or default, including collection, repossession  
466 and court costs, at an amount that is reasonable in light of the  
467 anticipated or actual harm caused by the delinquency or default, the  
468 difficulties of proof of loss and the inconvenience or unfeasibility of  
469 otherwise obtaining an adequate remedy.

470 (d) A consumer lease may provide for the imposition on the lessee  
471 of the holder's reasonable attorney's fees, but the fees are recoverable  
472 by the holder only if the holder is represented by an attorney who is  
473 not an employee of the holder. If a consumer lease provides for

474 recovery of attorney's fees by the holder, a lessee who successfully  
475 defends a collection action is entitled to reasonable attorney's fees from  
476 the holder.

477 Sec. 22. (NEW) (*Effective July 1, 2003*) (a) Until thirty days after a  
478 lessee receives from the assignor or assignee of the lease a signed  
479 notice in a record that the consumer lease has been assigned and  
480 containing the name and address of the assignee, the lessee may  
481 discharge the lessee's obligation by paying the assignor of the lease,  
482 and the following rules apply:

483 (1) If timely, a payment to the assignor is not subject to a late charge.

484 (2) Except as otherwise provided in subdivision (3) of this  
485 subsection, after the thirty-day period, the lessee discharges the  
486 lessee's obligation only by paying the assignee. An assignor who  
487 receives payment after notification is given must return the payment to  
488 the lessee or forward the payment to the assignee.

489 (3) If requested by the lessee after notice from the assignee under  
490 this subsection, the assignee shall seasonably furnish reasonable proof  
491 that the assignment has been made. Unless the assignee complies, the  
492 lessee may discharge the lessee's obligation by paying the assignor.

493 (b) Except as otherwise provided in subsection (b) of section 39 of  
494 this act, notwithstanding any provision in a consumer lease, a holder is  
495 subject to all claims and defenses arising from the lease which the  
496 lessee could assert against a previous holder and, if the original lessor  
497 does not select, manufacture or supply the goods, against the person  
498 from whom the lessor bought or leased the goods. A lessee's recovery  
499 from a holder under this subsection may not exceed amounts paid by  
500 the lessee to all holders under the lease.

501 Sec. 23. (NEW) (*Effective July 1, 2003*) (a) Except as otherwise  
502 provided in subsection (b) of this section, a lessee under a consumer  
503 lease may sublease or assign the lessee's rights and interest.

504 (b) A consumer lease may contain a specific and conspicuous  
505 provision requiring the holder's consent to a sublease or assignment of  
506 the lessee's rights and interest, and payment of a reasonable fee. In a  
507 lease for a period of more than twelve months, the provision must  
508 require the holder to consent unless the holder believes in good faith  
509 that the sublease or assignment will jeopardize the holder's rights or  
510 increase the holder's risk.

511 (c) Unless otherwise agreed by the holder, the obligations of the  
512 lessee under a consumer lease are not affected by a sublease or  
513 assignment, and the original lessee and the sublessee or assignee are  
514 jointly and severally liable under the assigned lease.

515 Sec. 24. (NEW) (*Effective July 1, 2003*) (a) In an open-end consumer  
516 lease, the estimated residual value must be a reasonable approximation  
517 of the anticipated fair market value of the goods on expiration of the  
518 lease. The estimated residual value of the goods is presumed to be  
519 unreasonable and not in good faith to the extent that the estimated  
520 residual value exceeds the realized value by more than three times the  
521 average payment allocable to a monthly period under the lease. The  
522 holder may not collect from the lessee the amount presumed to be  
523 unreasonable unless the holder succeeds in an action with respect to  
524 that amount. In all actions, the holder shall pay the lessee's reasonable  
525 attorney's fees.

526 (b) A presumption does not arise under subsection (a) of this section  
527 to the extent the excess of estimated residual value over realized value  
528 is due to physical damage to the goods beyond reasonable wear and  
529 use, or to excessive use, according to standards set in the lease under  
530 section 34 of this act.

531 (c) This section does not preclude a lessee, after expiration of the  
532 consumer lease, from agreeing to a final adjustment with respect to  
533 residual value.

534 (d) Upon expiration of an open-end consumer lease, the lessee may  
535 obtain at the lessee's expense a professional appraisal of the leased

536 goods by an independent third party agreed to by the lessee and  
537 holder. The appraisal is final and binding on the parties.

538 Sec. 25. (NEW) (*Effective July 1, 2003*) (a) A charge for casualty,  
539 liability or credit insurance included in a consumer lease or added  
540 under subsection (c) of this section may not exceed the premium  
541 imposed by the insurer for the insurance. This subsection does not  
542 preclude:

543 (1) The imposition of rent charges on insurance charges capitalized  
544 in the lease; or

545 (2) The lessor's realization of commissions, experience rebates or  
546 similar compensation from the insurer.

547 (b) If insurance included in a consumer lease or added under  
548 subsection (c) of this section is canceled or terminated, a refund of  
549 unearned insurance premiums received by the holder in excess of one  
550 dollar, at the holder's option, must be:

551 (1) Refunded to the lessee; or

552 (2) Credited, together with the unearned portion of the rent charge  
553 applicable to the refunded premium, to the lessee's current obligation,  
554 the final maturing periodic payments or the lessee's obligation upon  
555 termination of the lease.

556 (c) If a lessee does not maintain insurance required under a  
557 consumer lease, the holder may purchase substitute insurance only  
558 against substantially the same risks, covering the interests of the lessee  
559 and the holder or the interest of either of them.

560 (d) An amount paid by a holder for substitute insurance under  
561 subsection (c) of this section and added to the lessee's obligation under  
562 the lease is subject to:

563 (1) A rent charge as if that amount were part of the adjusted  
564 capitalized cost, from the later of the effective date of the insurance or

565 the date on which the holder notifies the lessee of the purchase of  
566 substitute insurance, its cost, and the effect on the payment schedule;  
567 and

568 (2) The repayment and default provisions of the lease.

569 (e) This section does not preclude a holder from pursuing any other  
570 remedy for default set forth in the lease or provided by law.

571 Sec. 26. (NEW) (*Effective July 1, 2003*) A person may not induce or  
572 attempt to induce a lessee to consummate a consumer lease by offering  
573 a post-consummation rebate, discount, commission or other  
574 consideration on the condition that the lessee provide information or  
575 assistance for the purpose of enabling a lessor or other person to lease  
576 or sell goods to another individual.

577 Sec. 27. (NEW) (*Effective July 1, 2003*) (a) As used in this section:

578 (1) "Magnuson-Moss Warranty Act" means 15 USC Sections 2301 to  
579 2312, inclusive, as amended, and includes rules, regulations,  
580 statements and interpretations issued by the Federal Trade  
581 Commission under said act.

582 (2) "Service contract" means a contract in a record to perform, over a  
583 fixed period or for a specified duration, services relating to the  
584 maintenance or repair, or both, of leased goods.

585 (3) "Supplier" means any person engaged in the business of making  
586 leased goods directly or indirectly available to lessees through  
587 consumer leases.

588 (4) "Written warranty" means:

589 (A) An affirmation of fact in a record or promise in a record made in  
590 connection with a consumer lease of goods by a supplier to a lessee,  
591 which relates to the nature of the material or workmanship, affirms or  
592 promises that the material or workmanship is defect free or will meet a  
593 specified level of performance over a specified period, and becomes

594 part of the basis of the bargain between the supplier and the lessee; or

595 (B) An undertaking in a record in connection with the lease by a  
596 supplier of goods to refund, repair, replace or take other remedial  
597 action with respect to the leased goods if the leased goods fail to meet  
598 the specifications set forth in the undertaking, which becomes part of  
599 the basis of the bargain between the supplier and the lessee.

600 (b) A supplier may not disclaim or, except as otherwise provided in  
601 subsection (c) of this section, modify an implied warranty to a lessee  
602 with respect to leased goods if:

603 (1) The supplier makes a written warranty to the lessee with respect  
604 to the leased goods; or

605 (2) At the time the lessee signs the lease, or within ninety days  
606 thereafter, the supplier enters into a service contract with the lessee  
607 which applies to the leased goods.

608 (c) Unless a supplier has made a warranty that would qualify as a  
609 full warranty under the Magnuson-Moss Warranty Act if made in  
610 connection with a sale of goods, the supplier may limit the duration of  
611 implied warranties to the duration of a written warranty of reasonable  
612 duration, if the limitation is conscionable and conspicuously displayed  
613 on the face of the warranty.

614 (d) A disclaimer, modification or limitation made in violation of this  
615 section is not enforceable.

616 (e) A term in a consumer lease that attempts to exclude or modify an  
617 implied warranty of merchantability or fitness or to exclude or modify  
618 a remedy for breach of such warranties is not enforceable.

619 Sec. 28. (NEW) (*Effective July 1, 2003*) (a) In this section, "gap  
620 amount" means the amount that would be owed by the lessee if a total  
621 loss of the goods occasioned by theft, physical damage or other  
622 occurrence were considered an early termination of the lease, less the  
623 portion of the cash value of the goods received by the holder from the

624 lessee's insurer or from any other source. The term does not include  
625 the deductible amount applicable to a casualty insurance policy on the  
626 goods, past due lease payments, or any other unpaid amounts owed  
627 by the lessee under the lease at the time of the total loss of the goods,  
628 or amounts by which the insurance proceeds otherwise payable are  
629 reduced on account of past due premiums or the condition of the  
630 goods before the total loss occurred.

631 (b) Except as otherwise provided in subsection (c) of this section, a  
632 consumer lease may not provide that the lessee is responsible for the  
633 gap amount. A provision in violation of this subsection is not  
634 enforceable.

635 (c) If a consumer lease so provides, the holder may recover from the  
636 lessee the portion of the gap amount attributable to:

637 (1) The lessee's failure to maintain in effect casualty insurance  
638 required under the lease;

639 (2) The lessee's fraud, intentional wrongful act or omission, or gross  
640 negligence; or

641 (3) The forfeiture or confiscation of the goods under governmental  
642 authority.

643 Sec. 29. (NEW) (*Effective July 1, 2003*) (a) A provision of a consumer  
644 lease stating events of default by the lessee is enforceable only to the  
645 extent that:

646 (1) The lessee does not make a payment required by the lease; or

647 (2) The holder establishes that the prospect of payment,  
648 performance or realization of the holder's interest in the goods is  
649 significantly impaired.

650 (b) If a default is solely the lessee's failure to make a payment  
651 required under the lease and the lessee has not voluntarily surrendered  
652 the leased goods to the holder, a holder may not accelerate, take

653 judicial action to collect, or repossess the leased goods unless the  
654 holder initiates a procedure for cure under this section and the lessee  
655 does not cure the default in a timely manner.

656 (c) A holder may initiate a procedure for cure by sending to the  
657 lessee, at any time after the lessee has been in default for ten days, a  
658 notice of right to cure the default. The notice must be in a record,  
659 contain a conspicuous statement that the lessee is entitled to cure the  
660 default and set forth the monetary amount necessary to cure the  
661 default, the date by which the curative payment is due and the name,  
662 address and telephone number of the holder from which information  
663 may be obtained regarding the cure. The date by which payment is due  
664 may not be less than twenty days after the notice is sent.

665 (d) Within the period for cure stated in the notice under subsection  
666 (c) of this section, the lessee may cure the default by tendering the  
667 amount of all unpaid sums due at the time of the tender, including any  
668 unpaid delinquency or default charges, but without additional security  
669 deposit or prepayment of periodic payments not yet due. Cure restores  
670 the rights of holder and lessee under the lease as if the default had not  
671 occurred.

672 (e) A lessee has the right to cure only once in any twelve-month  
673 period during the period of the lease.

674 Sec. 30. (NEW) (*Effective July 1, 2003*) (a) Except as otherwise  
675 provided in subsection (d) of this section and subject to section 29 of  
676 this act, on a lessee's default, the holder may repossess the goods by  
677 judicial process or by self-help without a breach of the peace.

678 (b) After repossession of the goods on a lessee's default, the holder  
679 shall apply the realized value of the goods as provided in the lease or,  
680 if the lease contains no such provision, in the following order:

681 (1) Default charges and collection costs imposed under the lease;

682 (2) Obligations of the lessee that are due or in default under the



683 lease; and

684 (3) The liability of the lessee on early termination of the lease.

685 (c) Unless otherwise agreed, a lessee is liable for any deficiency after  
686 application of the realized value. The holder may apply to the  
687 deficiency a security deposit taken under subdivision (1) of subsection  
688 (b) of section 20 of this act but shall refund to the lessee any amount of  
689 the security deposit remaining after satisfaction of the deficiency.

690 (d) (1) In this subsection, "electronic self help" means the use of  
691 electronic means to exercise a holder's rights pursuant to subsection (a)  
692 of this section and "electronic" means relating to technology that has  
693 electrical, digital, magnetic or wireless optical electromagnetic  
694 properties or similar capabilities. "Electronic self help" includes the use  
695 of electronic means to locate the goods.

696 (2) Electronic self help is permitted only if the lessee separately  
697 agrees to a term of the lease authorizing electronic self help that  
698 requires notice of exercise as provided in subdivision (3) of this  
699 subsection.

700 (3) Before resorting to electronic self help authorized by a term of  
701 the lease, the holder shall give notice to the lessee stating:

702 (A) That the holder intends to resort to electronic self help as a  
703 remedy on or after fifteen days following communication of the notice  
704 to the lessee;

705 (B) The nature of the claimed breach that entitled the holder to  
706 resort to self help; and

707 (C) The name, title, address and telephone number of a person  
708 representing the holder with whom the lessee may communicate  
709 concerning the goods.

710 (4) A lessee may recover direct and incidental damages caused by  
711 wrongful use of electronic self help. The lessee may also recover

712 consequential damages for wrongful use of electronic self help even if  
713 such damages are excluded by the terms of the lease.

714 (5) Even if the holder complies with subdivisions (2) and (3) of this  
715 subsection, electronic self help may not be used if the holder has  
716 reason to know that its use will result in substantial injury or harm to  
717 the public health or safety or grave harm to the public interest  
718 substantially affecting third parties not involved in the dispute.

719 Sec. 31. (NEW) (*Effective July 1, 2003*) (a) Subject to subsection (b) of  
720 this section, the amount of the realized value, if used to determine the  
721 lessee's liability on termination of a consumer lease, is the sum of:

722 (1) The amount of the rebate of premiums or charges for insurance,  
723 extended warranty, or service or maintenance contract to the extent the  
724 rebates are received by the holder; and

725 (2) One of the following:

726 (A) The price received by the holder on disposition of the leased  
727 goods by sale;

728 (B) If the goods are re-leased, the total of periodic payments plus the  
729 residual value under the new lease, reduced to present value; or

730 (C) If the goods are not disposed of, the higher of: (i) The best offer  
731 for disposition of the goods; or (ii) the fair market value of the goods.

732 (b) A lessee and holder under a consumer lease may agree at the  
733 time of termination on the realized value of the goods, or may agree in  
734 the lease or at the time of termination on a method for determining it,  
735 and the value so agreed upon or determined, unless unreasonable, is  
736 the realized value. An agreed realized value is not unreasonable if the  
737 value is determined by an appraiser agreed to by the holder and lessee,  
738 or by reference to a generally accepted reference source for goods of  
739 the kind.

740 (c) If the realized value is determined under subparagraph (A) or (B)

741 of subdivision (2) of subsection (a) of this section, the disposition may  
742 be by public or private sale or re-lease, at any time and place and on  
743 any terms. Every aspect of the disposition, including the method,  
744 manner, time, place and terms must be commercially reasonable.  
745 Disposition in a wholesale market is not unreasonable.

746 (d) If a disposition is to a person related to the holder, or a person  
747 obligated to the holder under an agreement for recourse, repurchase or  
748 the like, the realized value is not less than the fair market value of the  
749 goods.

750 (e) If a disposition is not commercially reasonable, the realized value  
751 must be established by reference to the retail market value of goods of  
752 the kind and condition at issue.

753 Sec. 32. (NEW) (*Effective July 1, 2003*) (a) A consumer lease may  
754 provide a measure or formula for the lessee's liability on early  
755 termination, but only at an amount reasonable in light of the  
756 anticipated or actual harm caused by the early termination, the  
757 difficulties of proof of loss and the inconvenience or unfeasibility of  
758 otherwise obtaining an adequate remedy. An early termination charge  
759 does not include:

760 (1) Unpaid periodic payments, or unpaid late, delinquency or  
761 default charges, accrued through the date of early termination;

762 (2) Charges provided under the lease for excess wear and tear or  
763 excess mileage, but only to the extent the excess wear and tear or  
764 excess mileage are not otherwise accounted for in the early termination  
765 charge;

766 (3) Other unpaid amounts for which the lessee is responsible under  
767 the lease;

768 (4) Official fees and taxes imposed in connection with lease  
769 termination; or

770 (5) The greater of a reasonable disposition fee in a fixed amount

771 disclosed in the lease or the reasonable costs incurred in retaking,  
772 storing, preparing for disposition and disposing of the goods.

773 (b) A charge imposed on a lessee for early termination of a  
774 consumer lease other than an open-end consumer lease may not  
775 exceed the total of the remaining periodic payments scheduled under  
776 the lease.

777 Sec. 33. (NEW) (*Effective July 1, 2003*) If a consumer lease is  
778 terminated before its scheduled expiration by mutual agreement of the  
779 holder and lessee, the holder may not report the early termination to a  
780 consumer reporting agency as a default by the lessee or guarantor. This  
781 section does not preclude the holder from reporting to a consumer  
782 reporting agency a previous default by the lessee or guarantor under  
783 the lease or a later default under the early termination agreement.

784 Sec. 34. (NEW) (*Effective July 1, 2003*) (a) A consumer lease may  
785 prescribe standards and impose liability on the lessee for excess wear  
786 and tear of the leased goods if the standards and amounts of liability  
787 are reasonable and reasonably applied to compensate the holder due to  
788 damage, abuse or lack of maintenance, but not exceeding the estimated  
789 or actual cost of repair and refurbishing.

790 (b) Standards for excess wear and tear do not subject the lessee to  
791 liability for:

792 (1) Ordinary and expected wear, use and depreciation of the goods  
793 during the period of the lessee's possession and use; or

794 (2) Damage or repair to the extent:

795 (A) The leased goods are covered by insurance, warranty, or by a  
796 repair, service or maintenance agreement issued in connection with the  
797 lease;

798 (B) Recovery or repair under the insurance, warranty or agreement  
799 is available to the holder; and

800 (C) The lessee cooperates as necessary to submit, document and  
801 process a claim under the insurance, warranty or agreement.

802 (c) In connection with the expiration of a consumer lease of goods  
803 other than a motor vehicle, if the holder charges the lessee for excess  
804 wear and tear, the holder shall:

805 (1) Send to the lessee notice in a record of the nature and amount of  
806 the charges within five business days after the goods are returned to  
807 the holder; and

808 (2) Provide reasonable time and access for the lessee or another  
809 person designated by the lessee to examine the goods.

810 (d) The time is reasonable under subdivision (2) of subsection (c) of  
811 this section if it is no less than twelve business days after the holder  
812 sends the notice under subdivision (1) of subsection (c) of this section.

813 (e) In addition to charges for excess wear and tear under chapter  
814 743k of the general statutes, a consumer lease of a motor vehicle may  
815 provide for the imposition of a reasonable charge for excess mileage.

816 Sec. 35. (NEW) (*Effective July 1, 2003*) (a) In sections 35 to 42,  
817 inclusive, of this act, with respect to violations of sections 16 and 33 of  
818 this act, "lessee" includes a guarantor.

819 (b) A holder that violates this act is liable to the lessee for actual  
820 damages. Where actual damages are claimed as a result of an alleged  
821 violation of a disclosure requirement under this act, the lessee must  
822 show reliance on the holder's conduct to the lessee's detriment as a  
823 necessary element to recovering the damages.

824 (c) Whether or not a lessee seeks or is entitled to damages, the lessee  
825 may maintain an action for declaratory or injunctive relief.

826 (d) Except in a class action, and except as otherwise provided in  
827 sections 35 to 42, inclusive, of this act, in addition to actual damages  
828 under subsection (b) of this section, a holder who violates this act is

829 liable for statutory damages of twenty-five per cent of the amount of  
830 payments scheduled under the lease, but no less than five hundred  
831 dollars and no more than one thousand dollars for a violation of any of  
832 the following provisions: Subsection (a) or (b) of section 14 of this act,  
833 subdivision (1), (2), (4) or (5) of subsection (c) of section 14 of this act,  
834 subsection (d) of section 14 of this act, section 15 of this act, section 17  
835 or 18 of this act, subsection (d) of section 20 of this act, subsection (b) of  
836 section 21 of this act, subsection (c) of section 25 of this act, section 26  
837 or 33 of this act or subsection (c) of section 34 of this act.

838 (e) In a successful action under sections 35 to 42, inclusive, of this  
839 act, a lessee is also entitled to the costs of the action and, except as  
840 otherwise provided in subsection (f) of this section, reasonable  
841 attorney's fees as determined by the court. In determining the award of  
842 attorney's fees, the amount of the lessee's recovery is not controlling.

843 (f) In order for a lessee as plaintiff in an action for monetary  
844 damages to recover attorney's fees under subsection (e) of this section,  
845 the following rules apply:

846 (1) Before the commencement of the action, the lessee must send the  
847 holder notice in a record of the alleged violation and the damages  
848 sought.

849 (2) If, within twenty days after the lessee's notification is sent, the  
850 holder provides the lessee with an offer of settlement in a record  
851 agreeing to pay the lessee an amount that equals or exceeds the  
852 damages eventually awarded to the lessee in the final judgment  
853 entered in the action, the lessee may not recover attorney's fees  
854 incurred after the lessee's receipt of the settlement offer. The lessee  
855 may nevertheless recover attorney's fees incurred before the receipt of  
856 the settlement offer in an amount determined by the court based on a  
857 reasonable hourly rate.

858 (3) Notification by the lessee under subdivision (1) of this subsection  
859 tolls the statute of limitations for a period of sixty days after the date  
860 the notification is sent.

861       Sec. 36. (NEW) (*Effective July 1, 2003*) A holder is not liable to any  
862       person, and a holder's rights under a lease are not affected, because of  
863       any act or omission arising out of the holder's reasonable belief that a  
864       transaction is not a consumer lease if the holder's belief is based on its  
865       reasonable reliance on a lessee's representation in a record concerning  
866       the purpose for which the leased goods were to be used.

867       Sec. 37. (NEW) (*Effective July 1, 2003*) (a) Except as otherwise  
868       provided in subsections (b) to (d), inclusive, of this section, an action  
869       under sections 35 to 42, inclusive, of this act may not be commenced  
870       more than three years after the termination of the lease that is the  
871       subject of the action.

872       (b) A class action under sections 35 to 42, inclusive, of this act may  
873       not be commenced more than three years after the occurrence of the  
874       violation that is the subject of the action.

875       (c) An action for a violation of section 13, 14 or 15 of this act may not  
876       be commenced more than three years after the date of the  
877       consummation of the lease.

878       (d) A lessee's claim for actual or statutory damages under sections  
879       35 to 42, inclusive, of this act may be raised by way of recoupment in  
880       an action by the holder on the lease without regard to the periods  
881       specified in subsections (a) to (c), inclusive, of this act.

882       Sec. 38. (NEW) (*Effective July 1, 2003*) (a) A holder is not liable for  
883       statutory damages under subsection (d) of section 35 of this act if,  
884       within sixty days after discovering a violation of this act and before  
885       commencement of an action under section 35 of this act or the receipt  
886       of written notice of the violation from the lessee, the holder notifies the  
887       lessee concerned and corrects the violation, including refund,  
888       restitution or crediting of any charges improperly disclosed or  
889       imposed.

890       (b) A holder is not liable for statutory damages under subsection (d)  
891       of section 35 of this act if the holder proves by a preponderance of the

892 evidence that the violation was unintentional and resulted from an  
893 error in good faith notwithstanding the maintenance of procedures  
894 reasonably adapted to avoid the error. For purposes of this subsection,  
895 errors in good faith include clerical errors, calculation errors, computer  
896 malfunctions and programming errors, but an error of legal judgment  
897 with respect to a holder's obligations under this act is not a good faith  
898 error.

899 (c) There may be no more than one recovery of statutory damages  
900 under subsection (d) of section 35 of this act for a violation of sections  
901 35 to 42, inclusive, of this act regardless of the number of lessees in the  
902 consumer lease.

903 (d) Liability does not arise under sections 35 to 42, inclusive, of this  
904 act with respect to an act or omission in good faith conforming to:

905 (1) A rule or interpretation of this act, or to an approval by the  
906 Commissioner of Consumer Protection, even if after the act or  
907 omission occurred, the rule, interpretation or approval is amended,  
908 rescinded or determined by judicial or other authority to be invalid; or

909 (2) With respect to requirements based on the federal Consumer  
910 Leasing Act, a rule, regulation or interpretation of said act by the  
911 Federal Reserve Board, even if after the act or omission occurred, the  
912 rule, regulation or interpretation is amended, rescinded or determined  
913 by judicial or other authority to be invalid.

914 (e) Regardless of the number of violations resulting from a holder's  
915 multiple failures to comply with the provisions enumerated in  
916 subsection (d) of section 35 of this act with respect to a single consumer  
917 lease, the lessee is entitled to a single recovery of statutory damages  
918 under sections 35 to 42, inclusive, of this act, but continued failure to  
919 comply after a recovery has been granted gives rise to rights to  
920 additional recoveries.

921 Sec. 39. (NEW) (*Effective July 1, 2003*) (a) Except as otherwise  
922 provided in subsection (b) of this section, the liability of a holder for a



923 violation of this act by a previous holder is subject to subsection (b) of  
924 section 22 of this act.

925 (b) An action for a violation of subsection (d) of section 15 of this act  
926 or section 17 or 26 of this act, or for a violation of the disclosure  
927 requirements of section 13 or 14 of this act or subsection (a), (b) or (c) of  
928 section 15 of this act may be maintained against a subsequent holder  
929 only if:

930 (1) A required disclosure is omitted or can be determined to be  
931 incomplete or inaccurate from the face of the record or other  
932 documents assigned; or

933 (2) The record does not contain a notice, provision or statement  
934 required to be used under this act.

935 Sec. 40. (NEW) (*Effective July 1, 2003*) (a) Except as otherwise  
936 provided in this act, a violation of this act by a holder does not impair  
937 the holder's rights under a consumer lease.

938 (b) If a holder's act or omission violates this act and also violates  
939 other law, the lessee is entitled to the larger of the monetary remedies  
940 authorized by this act or the other law.

941 Sec. 41. (NEW) (*Effective July 1, 2003*) The Commissioner of  
942 Consumer Protection shall enforce the provisions of this act. For this  
943 purpose, the commissioner has the power and is entitled to the  
944 remedies provided in the Unfair Trade Practices Act, chapter 735a of  
945 the general statutes.

946 Sec. 42. (NEW) (*Effective July 1, 2003*) (a) The Commissioner of  
947 Consumer Protection shall administer this act, and may adopt  
948 regulations designed to effectuate consumer protection under this act;  
949 prevent circumvention or evasion of, and facilitate compliance with,  
950 this act; avoid preemption by the federal Consumer Leasing Act; and  
951 assure consistent interpretations with those of other states enacting  
952 legislation substantially the same as this act.

953 (b) To keep the commissioner's regulations in harmony with those of  
954 administrators in other states that enact legislation substantially the  
955 same as this act, the commissioner, to the extent consistent with the  
956 provisions of this act, in adopting, amending and repealing  
957 regulations, shall take into consideration the regulations of  
958 administrators in other states that enact legislation substantially the  
959 same as this act.

960 Sec. 43. (NEW) (*Effective July 1, 2003*) If any provision of this act or  
961 its application to any person or circumstance is held invalid, the  
962 invalidity does not affect other provisions or applications of this act  
963 that can be given effect without the invalid provision or application,  
964 and to this end the provisions of this act are severable.

965 Sec. 44. (NEW) (*Effective July 1, 2003*) A consumer lease entered into  
966 before the effective date of sections 1 to 49, inclusive, of this act and the  
967 rights, duties and interests resulting from it may be terminated,  
968 completed or enforced as required or permitted by any statute, rule of  
969 law or other law amended, repealed or modified by this act as though  
970 the repeal, amendment, or modification had not occurred. However,  
971 this act applies when, after the effective date of sections 1 to 49,  
972 inclusive, of this act, a consumer lease is satisfied and replaced by a  
973 new lease undertaken by the same lessee for the same goods.

974 Sec. 45. (NEW) (*Effective July 1, 2003*) In applying and construing  
975 this uniform act, consideration must be given to the need to promote  
976 uniformity of the law with respect to its subject matter among states  
977 that enact it.

978 Sec. 46. Section 42-270 of the general statutes is repealed and the  
979 following is substituted in lieu thereof (*Effective July 1, 2003*):

980 As used in this section and section 42-271, as amended by this act:

981 (1) ["Lease agreement" or "lease"] "Lease" means [evidence of a  
982 transfer from a retail lessor to a retail lessee of the right to possession  
983 and use of a motor vehicle for a specified period exceeding four

984 months in return for consideration whether or not the lessee has the  
985 option to purchase or otherwise become the owner of the motor  
986 vehicle at the expiration of the agreement] a consumer lease, as defined  
987 in subdivision (2) of subsection (a) of section 2 of this act, of a motor  
988 vehicle, as defined in subdivision (11) of subsection (a) of section 2 of  
989 this act.

990 (2) "Lessor" means a [person who enters into a lease agreement with  
991 a lessee but excludes a person who is not regularly engaged in the  
992 business of selling or leasing personal property] lessor, as defined in  
993 subdivision (10) of subsection (a) of section 2 of this act. Lessor shall  
994 include a holder, as defined in subdivision (7) of subsection (a) of  
995 section 2 of this act.

996 (3) "Lessee" means a [person other than the lessor, who is liable  
997 under a lease agreement] lessee, as defined in subdivision (9) of  
998 subsection (a) of section 2 of this act.

999 Sec. 47. Section 42-271 of the general statutes is repealed and the  
1000 following is substituted in lieu thereof (*Effective July 1, 2003*):

1001 (a) A lessor may charge, receive or collect excess wear and tear  
1002 charges only if the lease sets forth reasonable standards for wear and  
1003 tear and any excess wear and tear charges are assessed in accordance  
1004 with the specified standards. These charges shall not exceed the  
1005 amounts stated in an itemized estimate, prepared by a motor vehicle  
1006 physical damage appraiser licensed under section 38a-790 or repair  
1007 shop licensed under section 14-52, selected by the lessor, of the  
1008 reasonable cost of repairs.

1009 (b) Within forty-five days after the return of the leased [property]  
1010 motor vehicle or such earlier date as otherwise agreed by the parties,  
1011 the lessor shall give the lessee notice, by registered or certified mail,  
1012 return receipt requested, or personal delivery stating the amount of  
1013 excess wear and tear charges claimed and containing an itemized  
1014 estimate upon which they are based and indicating that the lessee may  
1015 contest: (1) Whether any item for which an excess wear and tear charge

1016 has been claimed constitutes excess wear and tear; and (2) the amount  
1017 of any excess wear and tear charge. The lessor's notice shall specify the  
1018 names, addresses and telephone numbers of at least three persons who  
1019 are licensed appraisers or repair shops unaffiliated with the lessor that  
1020 are acceptable to the lessor. Failure to notify the lessee within the time  
1021 established by this subsection shall be a waiver of the lessor's right to  
1022 recover those charges.

1023 (c) The lessee may contest whether any item for which an excess  
1024 wear and tear charge has been claimed constitutes excess wear and  
1025 tear and the amount of any excess wear and tear charge by giving the  
1026 lessor notice in writing within fourteen days after the lessor's notice is  
1027 mailed or delivered in accordance with subsection (b) of this section  
1028 specifying the excess wear and tear items to which [he] such lessee  
1029 objects.

1030 (d) If the lessee gives the lessor notice in accordance with subsection  
1031 (c) of this section, the lessee may obtain an itemized estimate at the  
1032 lessee's expense from a licensed appraiser or repair shop within  
1033 fourteen days after the lessor's notice is mailed or delivered in  
1034 accordance with subsection (b) of this section. If the estimate obtained  
1035 by the lessee is prepared by a motor vehicle physical damage appraiser  
1036 licensed under section 38a-790 or repair shop licensed under section  
1037 14-52 specified in the lessor's notice, the lower of the two estimates  
1038 shall be the amount charged the lessee for excess wear and tear under  
1039 this section. If the estimate obtained by the lessee is prepared by a  
1040 motor vehicle physical damage appraiser licensed under section 38a-  
1041 790 or repair shop licensed under section 14-52 other than such a shop  
1042 or appraiser specified in the lessor's notice, the two estimates shall  
1043 establish the upper and lower limits of the amount charged the lessee  
1044 for excess wear and tear under this section.

1045 (e) The lessor shall allow the licensed appraiser or repair shop  
1046 selected by the lessee reasonable access to the leased [property] motor  
1047 vehicle during the time within which the lessee may obtain an  
1048 appraisal. If the lessor fails to retain the leased [property] motor

1049 vehicle during the time within which the lessee may obtain an  
 1050 appraisal or fails to allow the licensed appraiser or repair shop  
 1051 specified by the lessee the required reasonable access to the leased  
 1052 [property] motor vehicle, the lessor's failure shall be a waiver of the  
 1053 lessor's right to recover any charges under this section.

1054 Sec. 48. Section 42-271a of the general statutes is repealed and the  
 1055 following is substituted in lieu thereof (*Effective July 1, 2003*):

1056 Sections 42-270, as amended by this act, and 42-271, as amended by  
 1057 this act, shall apply to leases [or lease agreements] entered into on or  
 1058 after [October 1, 1995] the effective date of this section.

1059 Sec. 49. (*Effective July 1, 2003*) Sections 42-158a, 42-158d, 42-158e, 42-  
 1060 158f and 42-158g of the general statutes are repealed.

1061 Sec. 50. (*Effective July 1, 2002*) Section 42-158b of the general statutes,  
 1062 as amended by section 2 of public act 01-200, and section 42-158c of the  
 1063 general statutes, as amended by section 3 of public act 01-200, are  
 1064 repealed.

This act shall take effect as follows:	
Section 1	<i>July 1, 2003</i>
Sec. 2	<i>July 1, 2003</i>
Sec. 3	<i>July 1, 2003</i>
Sec. 4	<i>July 1, 2003</i>
Sec. 5	<i>July 1, 2003</i>
Sec. 6	<i>July 1, 2003</i>
Sec. 7	<i>July 1, 2003</i>
Sec. 8	<i>July 1, 2003</i>
Sec. 9	<i>July 1, 2003</i>
Sec. 10	<i>July 1, 2003</i>
Sec. 11	<i>July 1, 2003</i>
Sec. 12	<i>July 1, 2003</i>
Sec. 13	<i>July 1, 2003</i>
Sec. 14	<i>July 1, 2003</i>
Sec. 15	<i>July 1, 2003</i>
Sec. 16	<i>July 1, 2003</i>

Sec. 17	<i>July 1, 2003</i>
Sec. 18	<i>July 1, 2003</i>
Sec. 19	<i>July 1, 2003</i>
Sec. 20	<i>July 1, 2003</i>
Sec. 21	<i>July 1, 2003</i>
Sec. 22	<i>July 1, 2003</i>
Sec. 23	<i>July 1, 2003</i>
Sec. 24	<i>July 1, 2003</i>
Sec. 25	<i>July 1, 2003</i>
Sec. 26	<i>July 1, 2003</i>
Sec. 27	<i>July 1, 2003</i>
Sec. 28	<i>July 1, 2003</i>
Sec. 29	<i>July 1, 2003</i>
Sec. 30	<i>July 1, 2003</i>
Sec. 31	<i>July 1, 2003</i>
Sec. 32	<i>July 1, 2003</i>
Sec. 33	<i>July 1, 2003</i>
Sec. 34	<i>July 1, 2003</i>
Sec. 35	<i>July 1, 2003</i>
Sec. 36	<i>July 1, 2003</i>
Sec. 37	<i>July 1, 2003</i>
Sec. 38	<i>July 1, 2003</i>
Sec. 39	<i>July 1, 2003</i>
Sec. 40	<i>July 1, 2003</i>
Sec. 41	<i>July 1, 2003</i>
Sec. 42	<i>July 1, 2003</i>
Sec. 43	<i>July 1, 2003</i>
Sec. 44	<i>July 1, 2003</i>
Sec. 45	<i>July 1, 2003</i>
Sec. 46	<i>July 1, 2003</i>
Sec. 47	<i>July 1, 2003</i>
Sec. 48	<i>July 1, 2003</i>
Sec. 49	<i>July 1, 2003</i>
Sec. 50	<i>July 1, 2002</i>

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

### **OFA Fiscal Note**

#### **State Impact:**

Fund-Type	Agency Affected	Current FY \$	FY 03 \$	FY 04 \$
GF - Cost	Consumer Protection, Dept.	-	-	82,000
GF - Revenue Gain	Consumer Protection, Dept.	-	-	Indeterminate

Note: GF=General Fund

**Municipal Impact:** None

#### **Explanation**

#### **Department of Consumer Protection**

This bill applies to leases of consumers' goods longer than four (4) months and with a total obligation of up to \$150,000, establishes minimum requirements for consumer leases, establishes a longer statute of limitations (from one to either two or three years depending on the type of violation), sets standards for determining wear and tear of leased motor vehicles, requires the Commissioner of Consumer Protection to enforce the act and makes a violation of its provisions an unfair trade practice, authorizes the commissioner to adopt regulations, and makes other technical clarifications.

It is the intent of the commissioner to review each complaint, and determine compliance with the law. If a pattern develops or exists, then the department will investigate. Thus, the commissioner will follow current departmental procedures for investigating complaints. Depending on the number of complaints received and the impact on the agency's workload, the services of an additional Accounts Examiner position could be required. Thus, the future cost of this

Permanent Full-Time position, beginning in FY 04, would be as follows:

Personal Services	\$54,600
Fringe Benefits <sup>1</sup>	23,000
Other Expenses	750
Equipment (one-time cost)	3,700
Total Future Cost - GF	\$82,000

Under the Connecticut Unfair Trade Practices Act (CUTPA), civil penalties can be imposed for violations. The extent of the potential revenue gain cannot be determined since it would depend upon the number of violations which would occur, and the amount of the penalties that would be imposed.

The department will adopt regulations within existing resources.

### ***Judicial Department***

The bill grants certain rights to consumers, clarifies the responsibilities of lease holders and consumers and establishes a statute of limitations for bringing certain civil actions. It is uncertain how this would affect the number of civil cases brought before the Superior Court. The number of new civil cases added each year ranges between 50,000 and 60,000. The bill is not expected to alter the number of new cases such that it would fall outside the usual range. Consequently, the bill would have no fiscal impact to the Judicial Department.

House A" which includes the "wear and tear" provisions,



establishes statute of limitation standards, requires the Commissioner of Consumer Protection to enforce the act, makes a violation of its provisions an unfair trade practice and authorizes the commissioner to adopt regulations could have the future cost and revenue impact stated above.

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<sup>1</sup> Fringe benefit costs are not included within individual agency budgets. Such costs are included in the aggregate with the Miscellaneous Appropriations to the Comptroller.

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**OLR Amended Bill Analysis**

sHB 5248 (as amended by House "A")\*

**AN ACT CONCERNING THE UNIFORM CONSUMER LEASES ACT****SUMMARY:**

This bill requires consumer leases to be in a record and establishes minimum requirements for them. It defines a "consumer lease" as one that lasts at least four months with a total obligation of up to \$150,000 in which the goods are leased for a personal, family, or household purpose. It defines "record" as information inscribed on a tangible medium, such as paper, or stored in an electronic medium, such as a computer file, and is retrievable in perceivable form.

The bill:

1. establishes when leases are signed, completed, or terminated;
2. excludes certain leases;
3. makes certain transactions subject to the bill regardless of how they are characterized;
4. provides that it supplements and does not displace other law;
5. prohibits consumers from waiving rights established by the bill except to settle a dispute;
6. establishes rules concerning the choice of law;
7. requires good faith;
8. prohibits unconscionable conduct;
9. coordinates the bill with the federal "e-sign" law;
10. makes federal consumer lease advertising restrictions apply to leases with a total obligation of up to \$150,000;
11. requires lessors to give consumers a blank lease on request before a lease is signed;
12. makes federal consumer lease disclosure requirements apply to leases with a total obligation of up to \$150,000 (Current law does this for consumer motor vehicle leases.);
13. sets rules for lessors that require consumers to obtain casualty and liability insurance;
14. requires lessors to give lease guarantors a notice of their obligations

- and risks;
15. requires lessors to give consumers a payment status report on demand;
  16. sets rules concerning the return of property traded in or payments made before a lease is disapproved;
  17. prohibits consumer leases from containing provisions in which the consumer confesses judgment or allows a lessor to commit a trespass or breach of peace;
  18. prohibits a lessor from taking a security interest in the consumer's other property to secure a lease;
  19. sets limits on late fees and attorney's fees imposed on the consumer;
  20. requires that the consumer be notified when a lease is assigned;
  21. allows consumers to sublease and allows consumer leases to contain provisions requiring the consumer to obtain the lessor's consent;
  22. requires the estimated residual value in an open-end consumer lease to be a reasonable approximation of anticipated fair market value;
  23. prohibits a lessor's charges for insurance from being more than the premium charged by the insurer;
  24. prohibits a lessor from inducing a consumer to sign a lease by offering rebates or commissions;
  25. sets rules on the exclusion or modification of implied warranties;
  26. prohibits making consumers responsible for the gap amount, which is the difference between the amount paid by an insurer after a total loss and the total value of goods;
  27. sets rules for default and allowing a consumer to cure it;
  28. prohibits lessors from committing a breach of peace to repossess property, establishes how the lease holder must apply the realized value of the goods against the consumer's debt, and limits the use of electronic means to repossess goods;
  29. sets the means to determine realized value after goods are repossessed;
  30. limits a consumer's liability if a lease is terminated early;
  31. prohibits reporting mutually agreed-upon terminations to credit reporting agencies;
  32. sets standards for determining excess wear and tear for goods other than motor vehicles;
  33. allows a consumer to recover actual damages and statutory damages for specified violations;
  34. relieves the lease holder from liability for relying on a consumer's

- statement of his purpose for leasing goods;
35. establishes a statute of limitations;
  36. limits private remedies if the lease holder has corrected the violation;
  37. gives assignees limited protection from liability for certain violations of disclosure requirements;
  38. provides that a lease holder's violation of one provision does not affect his other rights under a consumer lease;
  39. requires the consumer protection commissioner to enforce the act;
  40. authorizes the consumer protection commissioner to adopt regulations;
  41. makes the bill's provision's severable;
  42. sets rules for the effect of the bill on current leases; and
  43. requires anyone applying or construing the bill to consider the need for uniformity among the states which have enacted it.

The bill eliminates the requirement that motor vehicle lessors disclose the "lease rate" of an automobile lease, the lease amount financed, and the lease finance charge.

The bill states that it may be cited as the "Uniform Consumer Lease Act."

\*House Amendment "A" (1) states that the bill may not be construed to limit or restrict other rights or remedies available under other statutes or general principles of law and equity, (2) eliminates a notice requirement to guarantors in the event of a default, (3) revises the current law concerning the determination of excess wear and tear charges at the end of a motor vehicle lease instead of incorporating it into the Uniform Consumer Leases Act, (4) establishes a longer statute of limitations than in the original bill, (5) revises how a consumer's obligation is determined when a lease is terminated before its scheduled term, (6) revises the provision requiring the consumer protection commissioner to enforce and administer the act, and (7) makes a technical changes.

EFFECTIVE DATE: July 1, 2003, except the repeal of the provisions concerning the calculation and disclosure of the lease rate in a motor vehicle lease takes effect on July 1, 2002.

## CONSUMER LEASE (§ 2)

The bill defines “consumer lease” as a lease or sublease in which (1) the consumer is obligated for a term longer than four months and for no more than \$150,000, excluding residual value, payments for options to renew or purchase, and payments to someone other than the lease holder and (2) the goods are for personal, family, or household purposes. It defines “lease” as a transfer of the right to possess and use goods for a period of time in return for a fee. It does not include a sale on approval, or the retention or creation of a security interest.

### **CONSUMMATION, EXPIRATION, AND TERMINATION (§ 3)**

Under the bill, a consumer consummates a consumer lease when he signs a record showing his contractual obligation. A consumer becomes obligated even if it is subject to subsequent approval by the lessor, such as a credit check.

A lease expires at the scheduled end of its term. A lease terminates when the consumer’s right to possess and use the goods ends because (1) the lease expires, (2) either party chooses to end the lease as permitted in the lease, or (3) the parties agree to terminate it.

### **SCOPE AND EXCLUSIONS (§ 4)**

The bill applies to all consumer leases except (1) leases entered into by a consumer and a lessor who has leased goods five or fewer times in the preceding or current calendar year or (2) goods incidental to the lease of real property if (a) the consumer is not liable for the value of the goods at the end of the lease except for abnormal wear and tear and (b) the consumer does not have a purchase option, or goods incidental to a sales contract, and (3) leases of safe-deposit boxes.

If a transaction is predominately a consumer lease transaction and it includes the incidental sale of goods or services, then the incidental sale is not subject to the laws concerning retail installment sales financing, retail credit transaction statement errors, or consumer layaway plans. For example, the incidental sale of a service contract made in connection with leasing goods would not be subject to those laws.

The bill provides that consumer lease provisions requiring the consumer to pay license or registration fees or taxes, amounts necessary to discharge security interests or liens, or to satisfy an

obligation from a previous lease do not make the payment subject to state laws on small loan lenders, truth-in-lending, retail installment sales financing, retail credit transaction statement errors, or consumer layaway plans.

#### **TRANSACTIONS SUBJECT TO THE BILL (§ 5)**

The bill prohibits a consumer lease from being designated as a credit sale, loan, or security interest to make the transaction subject to other law instead of this bill. The bill allows parties to a lease that is not subject to the bill to agree in a the lease or a record signed with the lease that the bill applies to their lease. The bill prohibits parties to a consumer lease from agreeing that the transaction is not subject to the bill.

#### **RELATIONSHIP TO OTHER LAW (§ 6)**

The bill provides that it is (1) supplemented by other applicable statutory provisions and by general principles of law and equity, unless they are inconsistent with the bill's provisions; and (2) not to be construed to limit or restrict in any way rights or remedies available to a lessee or another person under other statues or principles of law and equity.

#### **WAIVER OF RIGHTS (§ 7)**

The bill generally prohibits consumers from waiving or agreeing to forgo rights, benefits, or remedies established by the bill except as part of settling a dispute or collection claim. It makes a settlement in which a consumer has done so invalid if a court finds that the settlement was unconscionable when made.

#### **CHOICE OF LAW AND FORUM (§ 8)**

In a dispute concerning a lease agreement, the bill allows the parties to choose the applicable law only if they choose the jurisdiction in which (1) the consumer principally resides at the time the agreement is signed; (2) the consumer principally resides within 30 days after the agreement is signed; (3) the leased goods will be used; or (4) the leased goods are physically received, subject to the following rules.

If the choice of law is based on where goods are physically received,

the law chosen by the parties is not Connecticut law, and the lease holder initiates an action in this state to enforce rights against a state resident, the lease holder's action is subject to the bill's provisions concerning: (1) applicability and relationship to other laws (§§ 5 & 6); waiver of rights (§ 7); obligation of good faith (§ 9); unconscionability (§ 10); and except for any required disclosures, to the provisions concerning prohibited lease terms (§ 19); creation of security interests (§ 20); late charges (§ 21); payments after assignment by lease holder (§ 22); subleasing (§ 23); residual value (§ 24); insurance (§ 25); commissions or rebates (§ 26); default (§ 29); repossession (§ 30); determination of realized value (§ 31); early termination (§§ 32 & 33); and excess wear and tear standards (§ 34).

If a lease holder violates one of these provisions, the bill makes his actions subject to its provisions on: damages, costs, and attorney's fees (§ 35); liability for damages (§§ 36 & 38); statute of limitations (§ 37); liability of subsequent lease holders (§ 39); violations by lease holders (§ 40); and the consumer protection commissioner's powers and duties (§§ 41 & 42).

Regardless of any provision in a consumer lease, an action by a lease holder against a consumer to enforce rights must be brought where the consumer resides, and a consumer may bring an action against a lease holder in any judicial forum that otherwise has jurisdiction over the lease holder.

### **OBLIGATION OF GOOD FAITH (§ 9)**

The bill provides that every contract subject to, and every duty imposed by, this bill imposes an obligation of good faith in its performance or enforcement. The bill defines "good faith" as honesty in fact and the observance of reasonable commercial standards of fair dealing.

### **UNCONSCIONABILITY (§ 10)**

The bill allows a court to refuse to enforce a lease or lease term if it finds, as a matter of law, that the lease or term is unconscionable. Further, it allows a court to (1) enforce only the part of the lease that is not unconscionable or (2) limit the application of the unconscionable term to avoid an unconscionable result.

Under the bill, if the court as a matter of law finds that the lease or term was induced by unconscionable conduct, or if the conduct occurred in the collection of a claim from a lease agreement, the court may grant appropriate relief. The bill requires the court to give the parties a reasonable opportunity to present evidence about the setting, purpose, and effect of the consumer lease, provision, or conduct before making a finding of unconscionability.

In suits in which the consumer claims unconscionability, the bill requires the court to award reasonable attorney's fee if it finds unconscionability. Under the bill, the amount of recovery on behalf of the consumer is not controlling when the court determines reasonableness of attorney's fees.

### **FEDERAL "E-SIGN" LAW (§ 11)**

The bill provides that it modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, except for the provision that preserves existing consumer rights (Section 7001(c)), but does not authorize electronic delivery of notices described in the federal law (see BACKGROUND).

### **ADVERTISEMENTS (§ 12)**

The bill extends to all consumer leases the requirement that advertisements promoting consumer motor vehicle leases comply with the federal advertisement requirements of Consumer Leasing Act (see BACKGROUND). Federal law applies to leases in which the consumer incurs an obligation of up to \$25,000. The bill applies to leases in which the consumer incurs an obligation of up to \$150,000. The bill defines "advertisement" to include a commercial message in any medium that directly or indirectly promotes a consumer lease.

The bill prohibits anyone from publishing, broadcasting, or distributing a false, deceptive, or misleading advertisement. The bill states that these requirements and prohibitions do not apply to someone who acts only as an owner or employee of a medium in which an advertisement appears or through which it is disseminated.

### **LESSOR DUTIES BEFORE CONSUMMATION (§ 13)**

The bill requires a lessor to give a copy of its current consumer lease



form to an individual who asks for it at the lessor's place of business before a lease is signed. If the lessor is contracting with the consumer by mail and receives a request by mail, the lessor must mail the form to the consumer. If the lessor is contracting with the consumer electronically and the request is made electronically, the lessor must provide a copy and may do so electronically or by mail.

A lessor must provide the first copy without charge and may charge a reasonable amount for additional copies.

### **DISCLOSURES (§ 14)**

The bill requires lessors to make the disclosures required by the federal Consumer Leasing Act, regardless of whether the lease is subject to that act. As for the advertisement requirements and prohibitions, this has the effect of making the federal law to apply to leases in which the consumer incurs an obligation of more than \$25,000 and up to \$150,000. The bill requires lessors to make the disclosures again if a lease is renegotiated or extended.

When a lease is signed, a lease must be put in a record that:

1. clearly states in the beginning that it is a lease;
2. conspicuously states near the consumer's signature the following statement or one substantially similar. "NOTICE TO THE LESSEE: This is a lease. You are not buying the goods/vehicle. Do not sign this lease before you read it. You are entitled to a completed copy of this lease when you sign it."
3. identifies the lessor's place of business and consumer's residence;
4. identifies any property traded in or applied as a capitalized cost reduction or similar credit; and
5. in a motor vehicle lease, itemizes the gross capitalized cost by type and amount, unless the itemization is in a separate record that accompanies the lease.

The bill defines "conspicuous" with reference to a statement as one that is written, displayed, or presented in a way that a reasonable person should have noticed it. Under the bill, whether a statement is conspicuous is a decision for a court.

The bill prohibits lessors from presenting a consumer lease or lease application for signature that includes any blank spaces to be filled in

later unless the goods are scheduled for future delivery. In this case, the lease may include blanks for periodic payment due dates and specific identifying numbers or similar marks.

Promptly after a lease is signed, the lessor must give the consumer, without charge, (1) a written copy of the lease and (2) if not previously provided, written copies of all other records that the consumer has signed. A consumer's written acknowledgement of receipt creates a presumption of delivery.

### **INSURANCE (§ 15)**

The bill explicitly allows a lease agreement to require a consumer to maintain casualty insurance on the leased goods, liability insurance against personal injury or property damage caused to others, or both. If the agreement does not provide required coverages at no additional cost to the consumer, the holder must disclose in a record that the consumer may purchase the required insurance from any provider, subject to the holder's right to reject for reasonable cause.

If casualty insurance is neither required nor provided, the agreement must so state or be accompanied by a record that substantially states, "No insurance coverage for physical damage to the leased goods, or loss of the leased goods, is provided under this lease." A holder may not require a consumer to purchase credit life, accident, health, loss-of-income, or similar insurance in connection with the agreement.

If the lessor provides insurance in connection with a consumer lease, the lessor must disclose in a record that insurance is not required. The consumer's choice to purchase the insurance is effective only if the consumer, after receiving the disclosure, signs a separate record requesting the insurance.

Under the bill, if a consumer is obligated to pay for insurance provided by the lessor, the lessor must either give a copy of the policy or insurance certificate to the consumer or arrange for it to be provided.

### **GUARANTORS (§ 16)**

The bill defines "guarantor" as an individual who becomes obligated under a consumer lease because the original consumer does not meet credit standards or is in default. A guarantor does not include a co-

lessee or an assignor. Under the bill, a guarantor obligation is not enforceable unless (1) the lessor provided the guarantor before the guarantor signed a record containing a clear statement in a record that identified the obligation, the consumer, and the lessor, and reasonably informed the guarantor of the obligation and (2) the lessor provided the guarantor with a copy of the signed record of his obligation and, if requested, of the consumer lease.

The bill includes an example of such a statement. A guarantor's written acknowledgement of receipt creates a presumption that the records were delivered.

### **INFORMATION THAT MUST BE PROVIDED DURING THE TERM OF THE AGREEMENT (§ 17)**

Anyone who receives a lease payment must give a consumer a written receipt for any money payment. If a consumer requests in a record, holders must, within two weeks, give a record showing (1) the dates and amounts of the periodic payments received and the total amount of remaining periodic payments and (2) the consumer's total obligation required to pay off the agreement if terminated at a specified point during the term, and a statement that the amount due will be reduced by the "realized value" of the leased goods, if that is the case. The bill prescribes several different ways to determine the realized value of goods, described below.

The bill requires lease holders, if a lease provides for a purchase option that may be exercised at the consumer's request, to provide the purchase option price as of a specified date in a record if the consumer asks.

If any amount provided to a consumer in accordance with these requirements is an estimate, the holder must identify it as such. The bill prohibits holders from charging consumers for supplying one record in a 12-month period in response for a request for: the total amount of payments made, the total amount due to satisfy a lease, and the purchase option price. A holder may not charge more than \$5 for providing additional statements.

The bill requires holders, within two weeks after a lease has been discharged, to send either (1) a copy of the lease marked "discharged," "paid in full," or with a similar term, or (2) a record indicating that the

lease has been satisfied. The record of satisfaction does not release the consumer from liability under the lease for any acts or events the holder discovers after he sends the record.

### **DISAPPROVED APPLICATIONS AND PAYMENTS OR TRADE-INS MADE PRIOR TO LEASE APPROVAL (§ 18)**

Lessors sometimes accept a trade-in or cash payments before the lease agreement is approved.

The bill requires lessors to give the consumer a record of the consumer's rights and obligations under the bill whenever the consumer takes possession of a leased motor vehicle before the lease has been approved.

If the lessor disapproves a lease application, the lessor must (1) return any property (such as a traded-in vehicle) within one business day and (2) promptly, at least within five days, refund any consumer payment except an application fee.

There are two exceptions. One, the lessor may withhold traded-in property and any payment until the consumer returns any leased property. Two, the lessor of a motor vehicle may impose a mileage charge for the consumer's use of the vehicle. The charge may not be more than the mileage rate authorized for deduction under federal tax law. The bill allows a lessor to charge for mileage only if he has disclosed the charge and its amount in an acknowledged record at time of delivery. The bill allows lessors to offset a mileage charge against any refund due. The limitations on charging for the use of a vehicle and mileage charges do not affect a lessor's right to recover for damage to or loss of a vehicle while in a consumer's possession, if the damage or loss is attributable to the consumer's act or omission, or forfeiture or confiscation by a governmental authority.

The bill prohibits a lessor from selling or otherwise disposing of a consumer's property until the consumer's lease application has been approved. If a lessor has contracted to purchase property from a prospective consumer separately from the lease agreement, he cannot withhold or otherwise condition payment for that property on the consummation of the lease agreement.

### **PROHIBITED LEASE TERMS (§ 19)**

The bill prohibits a lease agreement from (1) authorizing the lease holder to accelerate payments when the holder deems himself insecure; (2) requiring the consumer to sign a confession of judgment or a wage assignment; or (3) authorizing the lease holder or any other person to enter the consumer's premises or to commit a breach of peace to repossess the goods. (In a "confession of judgment," a person agrees beforehand to the entry of a judgment against him if a specified event occurs, or fails to occur, such as making a required payment.) The bill makes any such prohibited term unenforceable, but the presence of the terms does not otherwise affect the lease's validity.

### **SECURITY DEPOSITS AND SECURITY INTEREST (§ 20)**

The bill allows consumer leases to require a security deposit, advance lease payment, or other prepayment. It, with three exceptions, prohibits consumer leases from creating a security interest in the consumer's real or personal property in connection with the lease to secure lease payments. A security interest in the consumer's property created in violation of the bill is unenforceable, but does not otherwise invalidate the lease.

The bill allows a consumer lease to create a security interest in (1) unearned insurance premiums or rebates of charges for a contract for services, or a service contract, extended warranty or maintenance agreement regarding the leased goods; (2) the proceeds or benefits of insurance, or of a contract for services, service contract, extended warranty or maintenance agreement on the leased goods, except to the extent they represent reimbursement for incurred expenses; and (3) an improvement that has been made a part of the leased goods.

The bill states that it does not prevent a lease holder from making a permissive filing of a financing statement under Article 9 of the Uniform Commercial Code (see BACKGROUND). The bill states that it does not require lease holders to pay interest on security deposits, advance lease payments, or other prepayments. The bill requires lease holders to account for the application of a security deposit to the consumer in a record within two weeks of applying it.

### **LATE CHARGES (§ 21)**

The bill allows a lease holder to impose a late charge on a periodic

payment that is at least 10 days overdue in an amount the lease specifies. It prohibits this amount from being more than the lesser of \$10 or 5% of the unpaid portion of the periodic payment. A late fee greater than this limit is not enforceable, with respect to amounts that exceed the limit.

The bill prohibits a lease holder from imposing a late charge on a current periodic payment if the only delinquency is an amount equal to or less than the amount of the late charge on an earlier payment. But the bill allows a lease to impose an additional charge if all or part of a periodic payment remains delinquent.

The bill also allows a consumer lease to impose charges for collection, repossession, and court costs, in an amount that is reasonable in light of anticipated or actual harm, difficulties of proof of loss, and inconvenience or unfeasibility of obtaining another adequate remedy.

The bill also allows a consumer lease to impose on the consumer the lease holder's reasonable attorney's fees. These fees are recoverable only if the lease holder is represented by an attorney who is not the lease holder's employee. If the lease provides for the recovery of the lessor's attorney's fees, the bill entitles the consumer who successfully defends a collection action to reasonable attorney's fees from the lease holder.

#### **PAYMENTS MADE AFTER A LEASE IS ASSIGNED AND LEASE HOLDER'S CLAIMS AND DEFENSES (§ 22)**

Lessors sometimes assign their leases to other parties. The person who assigns the lease is called the "assignor." The person to whom the lease is assigned is called the "assignee." The bill allows a consumer to continue to send payments to an assignor for 30 days after being notified of the assignment. During this period, the bill prohibits an assignor from imposing a late charge if the payment is made on time. After 30 days, the bill requires a consumer to pay an assignee. Despite this requirement, the bill allows a consumer to pay the assignor if an assignee had sent notice of the assignment and the consumer had asked for proof. The bill requires the assignee to send the proof "seasonably." (Although undefined in the bill, an event is generally understood to be "seasonable" if it is made in good or proper time.) The bill requires an assignor who receives a payment after the notification is sent to either return the payment or forward it to the

assignee.

The bill makes the lease holder subject to all claims and defenses, with certain exceptions, that a consumer could assert against a previous lease holder, and if the original lessor did not select, manufacture, or supply the goods, against the person from whom the original lessor obtained them.

### **SUBLEASING (§ 23)**

The bill allows a consumer to sublease or assign his rights and interest. But the bill allows a consumer lease to include a specific and conspicuous provision requiring the lease holder's consent to the sublease or assignment and to payment of a reasonable fee. In a lease of more than 12 months, the provision must require the lease holder to agree unless he believes in good faith that the sublease or assignment will jeopardize his rights or increase his risk.

Unless the lease holder agrees otherwise, the bill makes a consumer's obligations under a lease unaffected by a sublease or assignment and the bill makes the original consumer and the sublessee jointly and separately liable under the lease.

### **RESIDUAL VALUE (§ 24)**

In an open-ended lease, the bill requires the estimated residual value to be a reasonable approximation of the anticipated fair market value of the goods when the lease expires. The bill states that such estimated residual value is presumed to be unreasonable and not in good faith to the extent that it exceeds the realized value by more than three times the average monthly payment. The bill prohibits a lease holder from collecting more than that unless they have successfully sued for the amount. In all suits, the lease holder must pay the consumer's reasonable attorney's fees.

The bill establishes that a presumption does not arise that the difference between estimated and actual residual value is caused by excessive use of or physical damage to the goods beyond reasonable wear and tear. The bill permits a consumer, after a lease expires, to agree to a final adjustment concerning residual value.

The bill authorizes the consumer, when the lease expires, to obtain at

his own expense, a professional appraisal of the goods by an independent third party agreed to by both the consumer and lessor. The bill makes the appraisal final and binding on both parties.

### **INSURANCE CHARGES (§ 25)**

The bill prohibits charges for casualty, liability, or credit insurance included in a consumer lease from being more than the premium the insurer charges. The bill permits the lessor to (1) impose rent charges on insurance charges capitalized in the lease and (2) earn commissions, experience rebates, or similar compensation from the insurer. If insurance is canceled or terminated, the bill requires the lessor to use a refund of unearned premiums to (1) pay a refund to the consumer or (2) credit the amount and the unearned part of the rent charge applicable to the premium to the consumer's debt.

The bill allows a lease holder to purchase substitute insurance if a consumer does not maintain required insurance. The substitute insurance must cover substantially the same risks. The bill makes an amount paid to purchase substitute insurance and added to the consumer's debt under the lease subject to (1) the rent charge as if it were part of the adjusted capitalized cost and (2) the lease's default and repayment provisions. The bill states that it does not prevent the lease holder from pursuing other default remedies the lease or law allows.

### **INDUCEMENT WITH REBATES OR COMMISSION (§ 26)**

The bill prohibits anyone from inducing someone to sign a consumer lease by offering a post-consummation rebate, discount, commission, or other consideration on the condition that the consumer help the lessor sell or lease goods to someone else.

### **WARRANTIES (§ 27)**

Current law makes unenforceable lease provisions that attempt to exclude or modify (1) an implied warranty of merchantability or fitness or (2) a remedy for breach of such warranties in a consumer lease of a motor vehicle. The bill extends this prohibition to all consumer leases. The bill also allows such warranties to be limited under certain conditions.



The bill defines “written warranty” for its purposes in two ways. It can mean a recorded affirmation of fact or recorded promise made in connection with a consumer lease by a supplier to a consumer. It relates to the nature of the material or workmanship and affirms or promises that the material or workmanship is defect free or will meet a specified level of performance or a certain time period. It becomes a part of the basis of the bargain between supplier and consumer. “Written warranty” can also mean an undertaking in a written record in connection with the lease by a supplier to refund, repair, replace, or otherwise remediate if the goods fail to meet the specifications in the undertaking, which becomes a part of the bargain.

The bill prohibits a supplier from excluding, or modifying except as allowed by the bill, an implied warranty to a consumer, if (1) the supplier makes a written warranty to the consumer or (2) the supplier enters into a service contract with the consumer at the time the consumer signs the lease or within the next 90 days.

Unless a supplier has offered a warranty that would have qualified as a full warranty under the federal Magnuson-Moss Warranty Act (see BACKGROUND) if the goods were being sold, the bill allows a supplier to limit the duration of implied warranties to the reasonable duration of a written warranty, if the limit is conscionable and conspicuously displayed.

### **LIABILITY FOR THE GAP AMOUNT (§ 28)**

The bill prohibits a lease agreement from making the consumer responsible for the gap amount, except in certain circumstances. It defines the “gap amount” as the amount a consumer would owe if a total loss of the goods—due to theft, physical damage, or other occurrence before the end of the lease term—were considered an early termination, minus the amount the holder receives from the consumer’s insurance or any other source. The bill excludes (1) any deductible on the insurance policy, (2) past due lease payments or any other unpaid amounts owed by the consumer, and (3) amounts by which insurance proceeds are reduced due to past due premiums.

The bill allows leases to provide that the holder may recover the portion of the gap amount caused by (1) the consumer’s failure to maintain required casualty insurance; (2) the consumer’s acts of fraud, intentional wrongdoing, or gross negligence; or (3) forfeiture or

confiscation by a governmental authority.

### **DEFAULT AND THE RIGHT TO CURE (§29)**

The bill allows consumer leases to prescribe the events to take place in the event of default only if (1) the consumer causes the default by failing to make a payment or (2) the holder establishes that the consumer's ability to pay is significantly impaired.

If the consumer does not voluntarily surrender the leased goods, the bill requires the holder to give him a chance to cure the default before the holder accelerates, goes to court to collect, or repossesses the leased goods. The bill requires holders to give consumers the opportunity to cure by sending a notice to him after the consumer has been in default for at least 10 days stating that there is a right to cure. The notice must be a record, contain a conspicuous statement that the consumer is entitled to cure, and state the amount due, the date by which payment must be made, and the name, address, and telephone number of the holder from which pertinent information may be obtained. The payment date must be at least 20 days after the notice is served on the consumer.

To cure, the consumer must tender full payment, including delinquency or default charges, but without additional security deposit or prepayment of payments not yet due. Once a default is cured, the rights of the holder and consumer are restored as if the default had never taken place. The bill gives a consumer the right to cure a default only once in any 12-month period.

### **REPOSSESSION AND LIMITATION ON "ELECTRONIC SELF-HELP" (§ 30)**

If a consumer has not cured a default after having been given an opportunity to cure, the bill authorizes a lease holder to repossess a leased goods (1) through the courts or (2) directly if it does not result in a breach of peace. It requires the holder to apply the realized value of the leased goods as stated in the lease. If the lease does not have such a provision, the bill requires the holder to apply the realized value in the following order: (1) to default charges and collection costs imposed by the lease, (2) to the lease obligations that are due or in default, and (3) to the consumer's early termination liability. Unless otherwise agreed, the consumer is liable for any remainder after the holder has deducted

the realized value from the consumer's debt. The bill allows the holder to apply the security deposit to any deficiency, but requires the holder to refund any amount of security remaining after the consumer's debt has been paid.

The bill allows electronic self-help in connection with a consumer lease under specified conditions. It defines "electronic self-help" as using electronic means to locate and repossess goods. "Electronic" includes technology that has electrical, digital, magnetic, or wireless optical electromagnetic properties or similar capabilities.

The bill allows electronic self-help if the consumer separately agrees to a lease provision authorizing it and the provision requires the lease holder, before using electronic self-help, to notify the consumer (1) that the lease holder intends to use it; (2) that the use may occur 15 days after the notice is sent; (3) of the nature of the consumer's breach of contract; and (4) of the name, title, address, and telephone number of someone the consumer may contact concerning the leased goods. The bill authorizes the consumer to recover direct and incidental damages caused by the wrongful use of electronic self-help. Further, the consumer may recover consequential damages for wrongful use even if such damages are excluded by the lease. ("Direct damages," also called "general damages," refers to damages that naturally follow from a breach of contract. "Incidental damages" refers to damages that are reasonably associated with actual damages. "Consequential damages" refers to damages that do not flow directly from the violation but result indirectly from it.)

The bill prohibits electronic self-help if the lease holder has reason to know that its use will cause substantial injury or harm to the public health or safety or grave harm to the public interest substantially affecting third parties.

#### **DETERMINING THE REALIZED VALUE AFTER A LEASE IS TERMINATED (§ 31)**

Under the bill, the "realized value" is used to determine the consumer's liability when a lease is terminated. It is the sum of the amount of the rebate of premiums or insurance charges, extended warranty, or service or maintenance contract to the extent the holder receives them and one of the following:

1. if the goods are sold, the amount the lease holder received;
2. if the goods are re-leased, the total amount of periodic payments and residual value under the new lease; or
3. if the goods are not disposed of, the higher of any best offer or the fair market value.

The bill allows the lease holder and consumer to agree on the realized value or agree on a method for determining it. The bill provides that the agreed-upon value is the realized value unless it is unreasonable. A value is not unreasonable if it is determined by a mutually agreed upon appraiser or by reference to a generally accepted reference source.

The bill allows the lease holder to dispose of the goods by public or private sale or re-lease on any terms, but requires all aspects of the disposition to be commercially reasonable. The bill provides that disposition in a wholesale market is not reasonable. If the goods are not disposed of in a commercially reasonable way, their realized value must be established by referring to their retail market value. If the goods are disposed of to someone who is related or obligated to the lease holder, their realized value may not be less than their fair market value.

### **EARLY TERMINATION LIABILITY (§ 32)**

The bill allows a lease agreement to set a measure or formula to determine a consumer's liability if a lease is terminated early. However, it requires the liability to be a reasonable amount in the light of anticipated or actual harm caused by the early termination, the difficulties of proving loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

In a consumer lease that is not open-ended, the bill prohibits an early termination charge from being more than the total of remaining periodic payments. Under the bill, an early termination charge does not include (1) unpaid periodic payments or unpaid late, delinquency, or default charges accrued through the date of early termination; (2) charges established under the lease agreement for excess wear and use or excess mileage, but only to the extent they are not otherwise accounted for in the charge; (3) other unpaid amounts for which the consumer is responsible; (4) official fees and taxes imposed in connection with the termination; or (5) the greater of a reasonable

disposition fees stated in the lease or the reasonable costs incurred in retaking, storing, and disposing of the goods.

### **REPORTING EARLY TERMINATIONS (§ 33)**

The bill prohibits lease holders from reporting a mutually-agreed upon early termination to a credit reporting agency as a default. The bill provides that it does not prohibit a lease holder from reporting a previous or later default.

### **EXCESS WEAR AND TEAR (§ 34)**

The bill allows consumer leases, for goods other than motor vehicles, to set standards for determining the lessor's charges for excess wear and tear, but sets standards for those standards. The standards and amounts of liability must be reasonable and reasonably applied to compensate for the damage, abuse, or lack of maintenance, but must not be more than the actual or estimated cost of repair and refurbishing.

The bill prohibits making the consumer liable for (1) ordinary wear; (2) depreciation; or (3) damage to the extent that the goods are covered by insurance or a warranty, repair under the insurance or warranty coverage is available to the lease holder, and the consumer cooperates to submit and process an insurance or warranty claim.

For goods other than a motor vehicle and if the lease holder charges for excess wear and tear, the holder must send a notice to the consumer stating the nature and amount of the charges. The notice must be sent within five days after the goods are received from the consumer and provide the consumer with reasonable time and access for the consumer or another to examine the goods. Under the bill, the time is reasonable if it is at least 12 business days after the lease holder sends the notice.

The bill allows lease holders of consumer leases for motor vehicles to impose a reasonable charge for excess mileage in addition to excess wear and tear charges imposed under current law.

### **PRIVATE REMEDIES (§ 35)**

The bill allows consumers to sue lease holders and recover for actual

damages for violating the bill. If actual damages are claimed, the bill requires the consumer to show that he relied on the lease holder's conduct to his detriment. The bill allows the consumer to sue for declaratory or injunctive relief regardless of whether he seeks or is entitled to damages.

In addition, the bill generally makes the holder liable for statutory damages. The bill does not make the holder liable for statutory damages in class action suits. For the following violations, a holder is liable for 25% of the amount of scheduled payments but at least \$500 and no more than \$1,000:

1. failing to make required disclosures when a lease is signed, renegotiated, or extended (§ 14(a),(b));
2. failing to include certain notices in the lease (§ 14(c)(1) and (c)(2));
3. failing to identify in a lease property that has been traded in or to provide an itemized gross capitalized cost in a motor vehicle lease (§ 14(c)(4) and (5)) ;
4. presenting a lease for signature that includes a blank (§ 14(d));
5. failing to comply with the bill concerning insurance included in a consumer lease (§ 15);
6. failing to provide required information during the term of the lease (§ 17);
7. failing to comply with the bill concerning the return of items traded in and payments made before a lease application is disapproved (§ 18);
8. failing to state how a security deposit has been applied (§ 20(d));
9. failing to comply with the bill concerning the imposition of late charges (§ 21(b));
10. failing to comply with the bill concerning the purchase of substitute insurance if a consumer fails to maintain required insurance (§ 25(c));
11. offering rebates or commissions to induce a consumer to sign (§ 26);
12. reporting a mutually-agreed upon termination as a default (§ 33);  
and
13. violating the bill concerning excess wear and tear charges for goods other than a motor vehicle (§ 34(c)).

The bill entitles a consumer who successfully sues a holder to court costs and certain consumers to reasonable attorney's fees. In determining the award of attorney's fees, the bill provides that the amount of recovery is not controlling. Under the bill, a successful

plaintiff consumer is entitled to attorney's fees if:

1. before suing, the consumer sent a notice of the alleged violation to the lease holder and the damages sought; and
2. the lease holder failed, within 20 days, to provide the consumer with an offer of settlement that equals or is greater than the damages eventually awarded.

Nevertheless, a consumer may recover attorney's fees incurred before he receives a settlement offer in an amount the court determines based on a reasonable hourly rate.

### **RELIANCE ON THE CONSUMER'S STATEMENTS (§§ 36)**

A lease holder is not liable and his rights are unaffected by any act or omission caused by his reasonable belief that a transaction is not a consumer lease based on the consumer's representation in a record concerning the purpose for which the goods are being leased.

### **STATUTE OF LIMITATIONS (§ 37)**

Under the bill, with three exceptions, suits must be brought within three years of the lease's termination. The bill allows (1) class action suits to be brought within three years of the occurrence of a violation; (2) suits for violations of the bill's provisions concerning the lessor's duties before the lease is signed, mandatory disclosures, and required insurance to be brought within three years of the date the lease is signed; and (3) claims for actual or statutory damages to be raised by the consumer in any action by the lessor against him at any time.

### **LIMITS ON PRIVATE REMEDIES (§ 38)**

The bill relieves a lease holder from liability for statutory damages if:

1. the holder notifies the consumer and corrects a violation within 60 days of discovering it and before the consumer sues or sends a written notice of the violation. The lease holder's correction may include a refund, restitution, or crediting charges improperly disclosed or imposed; or
2. the holder proves beyond a preponderance of the evidence that the violation (a) was unintentional and (b) resulted from an error in good faith despite maintaining procedures designed to prevent the error. For this purpose, the bill states that "errors in good faith"

includes clerical errors, calculation errors, computer malfunctions, and programming errors. It states that an error in good faith does not include an error of legal judgment concerning the lease holder's obligations.

The bill allows only one recovery of statutory damages for a violation, regardless of the number of consumers in the lease.

The bill provides that a lease holder is not liable for damages concerning acts or omissions made in good faith conforming to:

1. a rule, interpretation, or approval by the consumer protection commissioner, even if after the act or omission occurred, the rule, interpretation, or approval was changed, rescinded, or held invalid in court; or
2. rules, regulations, or interpretations of the federal Consumer Leasing Act by the Federal Reserve Board even if after the act or omission occurred, the rule, interpretation, or approval was changed, rescinded, or held invalid in court.

The bill entitles a consumer to a single recovery of statutory damages, regardless of the number of violations of a single consumer lease. If there is a continued failure to comply after a recovery, the consumer has a right to additional recoveries.

### **LIABILITY OF ASSIGNEES (§ 39)**

The bill generally makes the assignee (a subsequent lease holder) subject to all claims and defenses that a consumer could assert against a previous lease holder. The bill, in limited circumstances, allows a consumer to sue for these specified violations only if (1) a required disclosure is omitted or can be determined to be incomplete or inaccurate from the face of the assigned record and documents or (2) the record does not contain a required notice, provision, or statement. The specified violations are failing to (1) provide a copy of an insurance policy that the consumer is obligated to pay through the lessor (§ 15(d)), (2) provide information about lease payment status (§ 17), (3) comply with the law prohibiting pre-consummation inducement (§ 26), (4) provide a copy of a blank lease form on request before a lease is signed (§ 13), (5) make the federal Consumer Leasing Act disclosures (§ 14), and (6) make disclosures about required casualty or liability insurance (§ 15 (a), (b), and (c)).



**EFFECT OF A VIOLATION ON THE RIGHTS OF THE PARTIES (§ 40)**

The bill provides that a lease holder's violation of the act does not otherwise impair the holder's rights under a lease. If the lease holder's act or omission violates the bill and other law, the bill entitles the consumer to the larger of the monetary remedies authorized by the bill or the other law.

**CONSUMER PROTECTION COMMISSIONER ENFORCES (§ 41)**

The bill requires the consumer protection commissioner to enforce the bill's provisions and, for this purpose, he has the power and is entitled to the remedies of the Connecticut Unfair Trade Practices Act (see BACKGROUND).

**REGULATIONS (§ 42)**

The bill authorizes the consumer protection commissioner to administer it and adopt regulations to protect consumers and prevent evasion of the bill's provisions, avoid preemption by the federal Consumer Leasing Act, and assure consistent interpretations with those of other states with similar acts. The bill requires the commissioner to take other states' regulations into consideration when adopting and amending regulations.

**SEVERABILITY (§ 43)**

The bill provides that if any of its provisions are deemed invalid, the determination does not affect the validity of any of its other provisions, if they are effective without the invalid provision.

**EFFECT ON CURRENT LEASES (§ 44)**

The bill provides that leases entered into before the act takes effect may be terminated, completed, or enforced as required or allowed by law as if the bill had not taken effect. The bill does apply to a consumer lease that replaces a lease that is satisfied after the bill takes effect.

**UNIFORMITY (§ 45)**

The bill requires anyone applying or construing it to give consideration to the need to promote uniformity among the states that have adopted it.

#### **EXCESS WEAR AND TEAR FOR MOTOR VEHICLES (§§ 46, 47 & 48)**

The law allows motor vehicle lessors to charge for excess wear and tear only if the lease sets reasonable wear and tear standards. It establishes procedures that consumers must follow to contest a lessor's charges and requires lessors to give a consumer's appraiser or repair shop reasonable access to inspect the motor vehicle. The bill adopts this law to the Uniform Consumer Leases Act by making the law apply to "consumer leases," "motor vehicles," "lessors," "holders," and "lessees," as defined in the uniform act. The revisions to the motor vehicle excess wear and tear law apply to leases entered into on or after July 1, 2003.

#### **LEASE RATE REQUIREMENT REPEALED (§§ 49 & 50)**

The bill eliminates the requirement that lessors disclose to consumers the lease rate in a motor vehicle lease. The law defines "lease rate" as the nominal annual percentage rate that reflects the amortization of the lease amount financed to the ending balance over the scheduled term, calculated by an actuarial method of allocating base periodic payments made on a debt between the lease finance charge and the amount financed, according to which a payment is applied first to the accrued finance charge and then to the unpaid amount financed. The requirement becomes effective on July 1, 2002, unless eliminated.

#### **BACKGROUND**

##### ***Federal Electronic Signatures In Global And National Commerce Act (15 USC § 7001 et. seq.)***

The Electronic Signatures in Global and National Commerce Act applies to transactions in interstate or foreign commerce. The act validates the use of electronic records and electronic signatures in transactions but does not require anyone to agree to use or accept electronic records or signatures. The federal e-sign law does not apply to (1) court documents; (2) notices relating to default, cure, repossession, foreclosure, or eviction, health or life insurance benefit

cancellation or termination; or (3) required documents accompanying the transport or handling of hazardous or dangerous materials.

### ***Disclosures Required by the Federal Consumer Leasing Act***

The federal Consumer Leasing Act is Chapter 5 of Title I of the Consumer Credit Protection Act. Its purpose is to ensure that consumers receive meaningful disclosures that enable them to compare leases and to provide for accurate disclosure of lease terms in advertising. It applies to leases for the use of personal property for more than four months and for a total contractual obligation of \$25,000 or less primarily for personal, family, or household purposes. The act requires lessors to disclose:

1. a brief description of the property;
2. the amount the consumer must pay at the start of the contract;
3. the amount the consumer must pay for official fees, registration, certificate of title, or license fees or taxes;
4. the amount and description of other charges the consumer must pay, other than the periodic payments, and whether the consumer is liable for the differential, if any, between the anticipated fair market value of the property and its appraised value at the end of the lease;
5. a statement of the amount of, or a method of determining, liabilities the lease imposes on the consumer at the end of the lease and whether the consumer has the option to purchase;
6. a statement identifying all express warranties and guarantees made by the manufacturer or lessor;
7. a brief description of the insurance provided or paid for by the lessor or required of the consumer;
8. a description of the security interest kept by the lessor;
9. the number, amount, and due dates of lease payments and their total amount;
10. if the lease makes the consumer responsible for the fair market value of the property at the end of the lease term, the fair market value at the start of the lease, the aggregate cost of the lease, and the difference between the two; and
11. a statement of the conditions under which both the consumer and the lessor may terminate the lease before the end of its term and the amount, or method of determining, the amount of any penalty or other charge (15 USC § 1667a).

Regulation M implements the federal statute and includes model disclosure forms (12 CFR Part 213).

### ***UCC Article 9 Filings***

Article 9 of the Uniform Commercial Code covers security interests in personal property that secure payments or other performance that the debtor is obligated to make. Property subject to the security interest is the collateral. An example is when someone buys furniture and the seller keeps an interest in the furniture as collateral until the buyer pays the entire purchase price. Article 9 sets out the requirements for a security interest to attach to the collateral (the moment when the security interest becomes enforceable) and to perfect a security interest in the collateral (this allows the secured party's interest to prevail over a creditor who gets a lien from a court). Filing a financing statement in the secretary of the state's office perfects a security interest in some types of collateral. These financing statements are generally valid for five years but can remain valid by filing a continuation statement. Under Article 9, the first to file or perfect a security interest generally has priority in the collateral over those who obtain a security interest and file or perfect later.

### ***Magnuson-Moss Warranty Act (§ 27)***

The act generally applies to consumer products. It requires all written warranties to be designated as either "full" or "limited." If a warranty is designated as "full", the act requires it to (1) promise to remedy a defect within a reasonable period of time and (2) give a consumer a choice of refund or replacement if the defect cannot be repaired after a reasonable number of attempts. The act prohibits a warranty designated as "full" from (1) limiting the duration of an implied warranty or (2) excluding or limiting consequential damages unless the exclusion appears on the face of the warranty.

### ***Connecticut Unfair Trade Practices Act***

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the DCP commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary

statements of compliance. The act also allows individuals to bring suit. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

### ***Legislative History***

The House referred the original version of the bill to the Judiciary Committee (March 28) and the Appropriations Committee (April 10). Both committees favorably reported the bill without change on April 3 and April 16, respectively.

### ***Related Bill***

On April 26, the House passed sHB 5653, An Act Adding Article 2A on leases to the Uniform Commercial Code (Originally File 447) with Amendments "A" and "B." The bill codifies the law on leased goods.

## **COMMITTEE ACTION**

### General Law Committee

Joint Favorable Substitute

Yea 17      Nay 0

### Judiciary Committee

Joint Favorable Report

Yea 34      Nay 0

### Appropriations Committee

Joint Favorable Report

Yea 51      Nay 0